

Laws 2003
1st Regular Session, Forty-Sixth Legislature 2003

Certificate of Authentication

STATE OF NEW MEXICO)

) SS:

OFFICE OF THE SECRETARY OF STATE)

I, **REBECCA VIGIL-GIRON**, **Secretary** of State of the State of New Mexico, do hereby certify that the printed laws contained herein are the true and correct copies of the **ENROLLED AND ENGROSSED LAWS** that were passed by the Forty-Sixth State Legislature of New Mexico at its First Session, which convened on the 21st day of January, 2003, and adjourned on the 22nd day of March, 2003, 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-Sixth State Legislature of the State of New Mexico, First Session.

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 23rd day of April,
2003.

Rebecca Vigil-Giron Secretary of State

CONSTITUTIONAL AMENDMENT 1

CONSTITUTIONAL AMENDMENT 1, LAWS 2003

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 12, SECTION 6 OF THE
CONSTITUTION OF NEW MEXICO TO TRANSFER THE STATE DEPARTMENT OF
PUBLIC EDUCATION TO A CABINET DEPARTMENT HEADED BY A SECRETARY

OF PUBLIC EDUCATION WHO SHALL SERVE IN THE EXECUTIVE CABINET AND TO CREATE AN ELECTED PUBLIC EDUCATION COMMISSION.

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

Section 1. It is proposed to amend Article 12, Section 6 of the constitution of New Mexico to read:

"A. There is hereby created a "public education department" and a "public education commission" that shall have such powers and duties as provided by law. The department shall be a cabinet department headed by a secretary of public education who is a qualified, experienced educator who shall be appointed by the governor and confirmed by the senate.

B. Ten members of the public education commission shall be elected for staggered terms of four years as provided by law. Commission members shall be residents of the public education commission district from which they are elected. Change of residence of a commission member to a place outside the district from which he was elected shall automatically terminate the term of that member.

C. The governor shall fill vacancies on the commission by appointment of a resident from the district in which the vacancy occurs until the next regular election for membership on the commission.

D. The secretary of public education shall have administrative and regulatory powers and duties, including all functions relating to the distribution of school funds and financial accounting for the public schools to be performed as provided by law.

E. The elected members of the 2003 state board of education shall constitute the public education commission, if this amendment is approved, until their terms expire and the districts from which the state board of education were elected shall constitute the state public education commission districts until changed by law."

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 that may be called for that purpose.

SENATE EDUCATION COMMITTEE SUBSTITUTE

FOR SENATE JOINT RESOLUTIONS 2, 5,

12 AND 21, AS AMENDED

CONSTITUTIONAL AMENDMENT 2

CONSTITUTIONAL AMENDMENT 2, LAWS 2003

A JOINT RESOLUTION

PROPOSING TO AMEND THE CONSTITUTION OF NEW MEXICO TO PROVIDE FOR A LIMITED ADDITIONAL DISTRIBUTION FROM THE PERMANENT FUNDS TO PROVIDE MORE MONEY FOR THE PUBLIC SCHOOLS TO IMPLEMENT AND MAINTAIN EDUCATIONAL REFORMS AND FOR OTHER PERMANENT FUND RECIPIENTS.

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

Section 1. It is proposed to amend Article 12, Section 7 of the constitution of New Mexico to read:

"A. As used in this section, "fund" means the permanent school fund described in Section 2 of this article and all other permanent funds derived from lands granted or confirmed to the state by the act of congress of June 20, 1910, entitled "An act to enable the people of New Mexico to form a constitution and state government and be admitted into the union on an equal footing with the original states."

B. The fund shall be invested by the state investment officer in accordance with policy regulations promulgated by the state investment council.

C. In making investments, the state investment officer, under the supervision of the state investment council, shall exercise the judgment and care under the circumstances then prevailing that businessmen of ordinary 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.

D. The legislature may establish criteria for investing the fund if the criteria are enacted by a three-fourths vote of the members elected to each house, but investment of the fund is subject to the following restrictions:

(1) not more than sixty-five percent of the book value of the fund shall be invested at any given time in corporate stocks;

(2) not more than ten percent of the voting stock of a corporation shall be held;

(3) stocks eligible for purchase shall be restricted to those stocks of businesses listed upon a national stock exchange or included in a nationally recognized list of stocks; and

(4) not more than fifteen percent of the book value of the fund may be invested in international securities at any single time.

E. All additions to the fund and all earnings, including interest, dividends and capital gains from investment of the fund shall be credited to the fund.

F. Except as provided in Subsection G of this section, the annual distributions from the fund shall be five percent of the average of the year-end market values of the fund for the immediately preceding five calendar years.

G. In addition to the annual distribution made pursuant to Subsection F of this section, unless suspended pursuant to Subsection H of this section, an additional annual distribution shall be made pursuant to the following schedule; provided that no distribution shall be made pursuant to the provisions of this subsection in any fiscal year if the average of the year-end market values of the fund for the immediately preceding five calendar years is less than five billion eight hundred million dollars (\$5,800,000,000):

(1) in fiscal years 2005 through 2012, an amount equal to eight-tenths percent of the average of the year-end market values of the fund for the immediately preceding five calendar years; provided that any additional distribution from the permanent school fund pursuant to this paragraph shall be used to implement and maintain educational reforms as provided by law; and

(2) in fiscal years 2013 through 2016, an amount equal to one-half percent of the average of the year-end market values of the fund for the immediately preceding five calendar years; provided that any additional distribution from the permanent school fund pursuant to this paragraph shall be used to implement and maintain educational reforms as provided by law.

H. The legislature, by a three-fifths' vote of the members elected to each house, may suspend any additional distribution provided for in Subsection G of this section."

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 that may be called for that purpose.

SENATE FLOOR SUBSTITUTE FOR

SENATE JOINT RESOLUTION 6, AS AMENDED

CONSTITUTIONAL AMENDMENT 3

CONSTITUTIONAL AMENDMENT 3, LAWS 2003

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 7 OF THE CONSTITUTION OF NEW MEXICO TO ALLOW RUNOFF ELECTIONS FOR MUNICIPALITIES HAVING A POPULATION OVER TWENTY THOUSAND AND FOR CERTAIN OTHER ELECTIONS AS PROVIDED BY LAW.

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

Section 1. It is proposed to amend Article 7, Section 5 of the constitution of New Mexico to read:

"A. All elections shall be by ballot.

B. The legislature may provide by law for runoff elections for all elections other than municipal, primary or statewide elections. If the legislature does not provide for runoff elections, the person who receives the highest number of votes for any office, except as provided in this section, and except in the cases of the offices of governor and lieutenant governor, shall be declared elected to that office. The joint candidates receiving the highest number of votes for the offices of governor and lieutenant governor shall be declared elected to those offices.

C. In a municipal election, the candidate that receives the most votes for an office shall be declared elected to that office, unless the municipality has provided for runoff elections. A municipality may provide for runoff elections as follows:

(1) a municipality that has not adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico may provide by ordinance for runoff elections;

(2) a municipality that has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico, and prior to the adoption of this amendment the charter provided for runoff elections, shall hold runoff elections pursuant to the charter; or

(3) a municipality that adopts or has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico may, subsequent to the adoption of this amendment, provide for runoff elections as provided in its charter."

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 that may be called for that purpose.

HOUSE JOINT RESOLUTION 1, AS AMENDED

CONSTITUTIONAL AMENDMENT 4

CONSTITUTIONAL AMENDMENT 4, LAWS 2003

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 8, SECTION 5 OF THE CONSTITUTION OF NEW MEXICO TO APPLY THE EXEMPTION FROM PROPERTY TAXATION TO ALL HONORABLY DISCHARGED VETERANS WHO SERVED IN THE UNITED STATES ARMED FORCES.

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

Section 1. It is proposed to amend Article 8, Section 5 of the constitution of New Mexico to read:

"The legislature shall exempt from taxation the property of each head of the family in the amount of two thousand dollars (\$2,000). The legislature shall also exempt from taxation the property, including the community or joint property of husband and wife, of every honorably discharged member of the armed forces of the United States and the widow or widower of every such honorably discharged member of the armed forces of the United States, in the sum of three thousand dollars (\$3,000) in 2004; three thousand five hundred dollars (\$3,500) in 2005; and four thousand dollars (\$4,000) in 2006 and each subsequent year. Provided, that in every case where exemption is claimed on the ground of the claimant's having served with the armed forces of the United States as aforesaid, the burden of proving actual and bona fide ownership of such property upon which exemption is claimed, shall be upon the claimant."

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 that may be called for that purpose.

HOUSE JOINT RESOLUTION 2

CHAPTER 1

CHAPTER 1, LAWS 2003

AN ACT

RELATING TO CERTAIN GOVERNMENT FUNCTIONS; APPROPRIATING FUNDS FOR THE EXPENSE OF THE FORTY-SIXTH LEGISLATURE, FIRST SESSION, 2003 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; MAKING APPROPRIATIONS TO UPGRADE THE FIRE ALARM SYSTEM AND THE SECURITY SYSTEM IN THE STATE CAPITOL; MAKING SUPPLEMENTAL APPROPRIATIONS TO THE OFFICE OF THE GOVERNOR AND THE OFFICE OF THE LIEUTENANT GOVERNOR FOR EXPENDITURE IN FISCAL YEAR 2003; MAKING A SUPPLEMENTAL APPROPRIATION TO THE ADMINISTRATIVE OFFICE OF THE COURTS FOR EXPENDITURE IN FISCAL YEAR 2003; DECLARING AN EMERGENCY.

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

Section 1. SESSION EXPENSES.--

A. There is appropriated for the expense of the legislative department of the state of New Mexico for the first session of the forty-sixth legislature for per diem and mileage of its members, for salaries of employees and for other expenses of the legislature, six million eight hundred ninety-three thousand five hundred seventy-eight dollars (\$6,893,578) or so much thereof as may be necessary for such purposes.

B. The expenditures referred to in Subsection A of this section are as follows:

(1) per diem for senators ---- \$365,400;

(2) per diem for members of the house of
representatives ----- \$609,000;

(3) mileage traveled by members of the senate going to and returning from the seat of government by the usually traveled route, one round trip ----- \$4,525;

(4) 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 ----- \$ 7,000;

(5) salaries and employee benefits of senate employees ----- \$2,116,611;

(6) salaries and employee benefits of house of representatives employees ----- \$1,782,373;

(7) for expense of the senate not itemized above, four hundred ninety-five thousand eight hundred sixty-nine dollars (\$495,869). No part of this item may be transferred to salaries or employee benefits; and

(8) for expense of the house of representatives not itemized above, four hundred seventy-four thousand nine hundred dollars (\$474,900). No part of this item may be transferred to salaries or employee benefits; and

(9) for session expenses of the legislative council service, the joint billroom and mailroom and joint legislative switchboard, one million thirty-seven thousand nine hundred dollars (\$1,037,900) to be disbursed upon vouchers signed by the director of the legislative council service.

C. 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. The expenditures for the house of representatives shall be disbursed on vouchers signed by the speaker and chief clerk of the house. Following adjournment of the session, expenditures authorized pursuant to Paragraphs (1) through (8) of Subsection B of this section shall be disbursed upon vouchers signed by the director of the legislative council service.

D. Under the printing contracts entered into for the first session of the forty-sixth legislature, 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 2. BILLS AND OTHER PRINTED MATERIALS.--

A. For the first session of the forty-sixth 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:

(1) one copy to each member of the house of representatives and senate;

(2) 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;

(3) upon written request, 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

(4) one copy to two other addresses specified by each individual member of the legislature.

B. Any person not listed in Subsection A of this section 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 twenty-five dollars (\$625), 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 two dollars (\$2.00) 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 seventy-five dollars (\$175) for the entire session.

Section 3. LEGISLATIVE COUNCIL SERVICE.--There is appropriated from the general fund to the legislative council service for fiscal year 2004 unless otherwise indicated, to be disbursed on vouchers signed by the director of the legislative council service, the following:

A. Personal Services &
Employee Benefits

\$2,966,900

Contractual Services	187,000
Other Costs	932,200
Total	\$4,086,100;

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 2004, eight hundred eighty-six thousand dollars (\$886,000); 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, three hundred fifty-two thousand three hundred dollars (\$352,300); and

D. for a statewide legislative intern program, twenty-five thousand dollars (\$25,000).

Section 4. LEGISLATIVE FINANCE COMMITTEE.--There is appropriated from the general fund to the legislative finance committee for fiscal year 2004, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:

Personal Services & Employee Benefits	\$2,519,100
Contractual Services	149,700
Other Costs	313,300
Total	\$2,982,100.

Section 5. LEGISLATIVE EDUCATION STUDY COMMITTEE.--There is appropriated from the general fund to the legislative education study committee for fiscal year 2004, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:

Personal Services & Employee Benefits	\$737,596
Contractual Services	25,000
Other Costs	151,000
Total	\$913,596.

Section 6. SENATE RULES COMMITTEE.--There is appropriated from the general fund to the legislative council service for the

interim duties of the senate rules committee, twenty-one thousand six hundred dollars (\$21,600) for fiscal year 2004.

Section 7. HOUSE CHIEF CLERK.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2004 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 & Employee Benefits	\$777,350
Contractual Services	55,500
Other Costs	55,000
Total	\$887,850.

Section 8. SENATE CHIEF CLERK.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2004 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 & Employee Benefits	\$726,500
Contractual Services	141,800
Other Costs	52,500
Total	\$920,800.

Section 9. PHASE 2 IMPLEMENTATION OF CLASSIFICATION AND SALARY RANGE STUDY--CONTINGENCY.--Two hundred ninety-seven thousand dollars (\$297,000) is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2004 for compensation adjustments for permanent legislative staff in order to implement phase 2 of the national conference of state legislatures classification and salary range study. Expenditure of the appropriation is contingent upon:

A. the classification and salary range review committee certifying the adjustments necessary to bring salaries into compliance with the study; and

B. final review and approval by the New Mexico legislative council.

Section 10. LEGISLATIVE INFORMATION SYSTEM.--There is appropriated from the legislative cash balances to the legislative council service for the legislative information system four hundred

ninety-one thousand six hundred dollars (\$491,600) for expenditure during fiscal years 2003 and 2004.

Section 11. FIRE ALARM SYSTEM AND SECURITY SYSTEM UPGRADES.--Five hundred twenty thousand dollars (\$520,000) is appropriated from the legislative cash balances to the legislative council service for expenditure in fiscal year 2004 for the purpose of upgrading the fire alarm system and the security system in the state capitol.

Section 12. SUPPLEMENTAL APPROPRIATIONS--OFFICE OF THE GOVERNOR.--The following amounts are appropriated from the general fund to the office of the governor for the specified purposes for expenditure in fiscal year 2003. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund:

Personal Services & Employee Benefits	\$730,300
Contractual Services	13,200
Other Costs	50,000
Total	\$793,500.

Section 13. SUPPLEMENTAL APPROPRIATIONS--OFFICE OF THE LIEUTENANT GOVERNOR.--The following amounts are appropriated from the general fund to the office of the lieutenant governor for the specified purposes for expenditure in fiscal year 2003. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund:

Personal Services & Employee Benefits	\$71,200
Contractual Services	7,000
Total	\$78,200.

Section 14. SUPPLEMENTAL APPROPRIATIONS--ADMINISTRATIVE OFFICE OF THE COURTS.--Fifty thousand dollars (\$50,000) is appropriated from the general fund to the administrative office of the courts for expenditure in fiscal year 2003 for jury and witness costs. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund.

Section 15. CATEGORY TRANSFER.--Amounts set out in Sections 3, 4, 5, 7, 8, 12 and 13 of this act are provided for informational purposes only and may be freely transferred among categories.

Section 16. PERFORMANCE MEASURES.--Each legislative agency shall adhere to the performance measures specified in its strategic plan and shall make reports as required in that plan.

Section 17. EMERGENCY.--It is necessary for the public

peace, health and safety that this act take effect immediately.

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 1, AS AMENDED

WITH EMERGENCY CLAUSE, SIGNED JANUARY 29, 2003

CHAPTER 2

CHAPTER 2, LAWS 2003

AN ACT

RELATING TO TAXATION; REDUCING INCOME TAX RATES; EXPANDING THE CAPITAL GAINS DEDUCTION; CHANGING REQUIREMENTS FOR PAYMENT OF INTEREST ON CERTAIN REFUNDS.

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

Section 1. Section 7-1-68 NMSA 1978 (being Laws 1965, Chapter 248, Section 69, as amended) is amended to read:

"7-1-68. INTEREST ON OVERPAYMENTS.--

A. As provided in this section, interest shall be allowed and paid on the amount of tax overpaid by a person that is subsequently refunded or credited to that person.

B. Interest payable on overpayments of tax shall be paid at the rate of fifteen percent a year, computed on a daily basis; provided that if a different rate is

specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall be applied to amounts due under the compact or other agreement.

C. Unless otherwise provided by this section, interest on an overpayment not arising from an assessment by the department shall be paid from the date the claim for refund was made until a date preceding by not more than thirty days the date on which the amount thereof is credited or refunded to any person; interest on an overpayment arising from an assessment by the department shall be paid from the date overpayment was made until a date preceding by not more than thirty days the date on which the amount thereof is credited or refunded to any person.

D. No interest shall be allowed or paid with respect to an amount credited or refunded if:

(1) the amount of interest due is less than one dollar (\$1.00);

(2) the credit or refund is made within:

(a) fifty-five days of the date of the claim for refund of income tax, pursuant to either the Income Tax Act or the Corporate Income and Franchise Tax Act for the tax year immediately preceding the tax year in which the claim is made; or

(b) seventy-five days of the date of the claim for refund of gasoline tax to users of gasoline off the highways;

(3) the credit or refund is made within one hundred twenty days of the date of the claim for refund of income tax, pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act, for any tax year more than one year prior to the year in which the claim is made;

(4) Sections 6611(f) and 6611(g) of the Internal Revenue Code, as those sections may be amended or renumbered, prohibit payment of interest for federal income tax purposes;

(5) the credit or refund is made within sixty days of the date of the claim for refund of any tax other than income tax; or

(6) the credit results from overpayments found in an audit of multiple reporting periods and applied to underpayments found in that audit or refunded as a net overpayment to the taxpayer pursuant to Section 7-1-29 NMSA 1978.

E. Nothing in this section shall be construed to require the payment of interest upon interest."

Section 2. Section 7-2-7 NMSA 1978 (being Laws 1994, Chapter 5, Section 20, as amended) is amended to read:

"7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning in 2003:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
Not over \$4,000	1.7% of taxable income
Over \$4,000 but not over \$8,000	\$68.00 plus 3.2% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$196 plus 4.7% of excess over \$8,000
Over \$12,000 but not over \$20,000	\$384 plus 6.0% of excess over \$12,000
Over \$20,000 but not over \$32,000	\$864 plus 7.1% of excess over \$20,000
Over \$32,000 \$32,000.	\$1,716 plus 7.7% of excess over \$32,000.

B. For surviving spouses and married individuals filing joint returns:

If the taxable income is:	The tax shall be:
Not over \$8,000	1.7% of taxable income
Over \$8,000 but not over \$16,000	\$136 plus 3.2% of excess over \$8,000
Over \$16,000 but not over \$24,000	\$392 plus 4.7% of excess over \$16,000
Over \$24,000 but not over \$40,000	\$768 plus 6.0% of excess over \$24,000
Over \$40,000 but not over \$64,000	\$1,728 plus 7.1% of excess over \$40,000
Over \$64,000 \$64,000.	\$3,432 plus 7.7% of excess over \$64,000.

C. For single individuals and for estates and trusts:

If the taxable income is:	The tax shall be:
Not over \$5,500	1.7% of taxable income
Over \$5,500 but not over \$11,000	\$93.50 plus 3.2% of

excess over \$5,500

Over \$11,000 but not over \$16,000 \$269.50 plus 4.7% of

excess over \$11,000

Over \$16,000 but not over \$26,000 \$504.50 plus 6.0% of

excess over \$16,000

Over \$26,000 but not over \$42,000 \$1,104.50 plus 7.1% of

excess over \$26,000

Over \$42,000 \$2,240.50 plus 7.7% of excess over
\$42,000.

D. For heads of household filing returns:

If the taxable income is:

The tax shall be:

Not over \$7,000

1.7% of taxable income

Over \$7,000 but not over \$14,000

\$119 plus 3.2% of excess over \$7,000

Over \$14,000 but not over \$20,000

\$343 plus 4.7% of excess over \$14,000

Over \$20,000 but not over \$33,000

\$625 plus 6.0% of excess over \$20,000

Over \$33,000 but not over \$53,000

\$1,405 plus 7.1% of excess over \$33,000

Over \$53,000
\$53,000.

\$2,825 plus 7.7% of excess over

E. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income."

Section 3. Section 7-2-7 NMSA 1978 (being Laws 1994, Chapter 5, Section 20, as amended and as further amended by Section 2 of

this act) is repealed and a new Section 7-2-7 NMSA 1978 is enacted to read:

"7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning in 2004:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
Not over \$4,000	1.7% of taxable income
Over \$4,000 but not over \$8,000	\$68.00 plus 3.2% of excess over \$4,000
	Over \$8,000 but not over \$12,000
	\$196 plus 4.7% of excess over \$8,000
Over \$12,000 but not over \$20,000	\$384 plus 6.0% of excess over \$12,000
Over \$20,000	\$864 plus 6.8% of excess over \$20,000.

B. For surviving spouses and married individuals filing joint returns:

If the taxable income is:	The tax shall be:
Not over \$8,000	1.7% of taxable income
Over \$8,000 but not over \$16,000	\$136 plus 3.2% of excess over \$8,000
Over \$16,000 but not over \$24,000	\$392 plus 4.7% of excess over \$16,000
Over \$24,000 but not over \$40,000	\$768 plus 6.0% of excess over \$24,000
Over \$40,000	\$1,728 plus 6.8% of excess over \$40,000.

C. For single individuals and for estates and trusts:

If the taxable income is:	The tax shall be:
Not over \$5,500	1.7% of taxable income
Over \$5,500 but not over \$11,000	\$93.50 plus 3.2% of excess over \$5,500
Over \$11,000 but not over \$16,000	\$269.50 plus 4.7% of excess over \$11,000

Over \$16,000 but not over \$26,000 \$504.50 plus 6.0% of excess over \$16,000

Over \$26,000 \$1,104.50 plus 6.8% of excess over \$26,000.

D. For heads of household filing returns:

If the taxable income is: The tax shall be:

Not over \$7,000 1.7% of taxable income

Over \$7,000 but not over \$14,000 \$119 plus 3.2% of excess over \$7,000

Over \$14,000 but not over \$20,000 \$343 plus 4.7% of excess over \$14,000

Over \$20,000 but not over \$33,000 \$625 plus 6.0% of excess over \$20,000

Over \$33,000 \$1,405 plus 6.8% of excess over \$33,000.

E. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income."

Section 4. Section 7-2-7 NMSA 1978 (being Section 3 of this act if it becomes law) is repealed and a new

Section 7-2-7 NMSA 1978 is enacted to read:

"7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning in 2005:

A. For married individuals filing separate returns:

If the taxable income is: The tax shall be:

Not over \$4,000 1.7% of taxable income

Over \$4,000 but not over \$8,000 \$68.00 plus 3.2% of excess over \$4,000

Over \$8,000 but not over \$12,000 \$196 plus 4.7% of excess over \$8,000

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income."

Section 5. Section 7-2-7 NMSA 1978 (being Section 4 of this act if it becomes law) is repealed and a new

Section 7-2-7 NMSA 1978 is enacted to read:

"7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning in 2006:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
Not over \$4,000	1.7% of taxable income
Over \$4,000 but not over \$8,000	\$68.00 plus 3.2% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$196 plus 4.7% of excess over \$8,000
Over \$12,000	\$384 plus 5.3% of excess over \$12,000.

B. For surviving spouses and married individuals filing joint returns:

If the taxable income is:	The tax shall be:
Not over \$8,000	1.7% of taxable income
Over \$8,000 but not over \$16,000	\$136 plus 3.2% of excess over \$8,000
Over \$16,000 but not over \$24,000	\$392 plus 4.7% of excess over \$16,000
Over \$24,000	\$768 plus 5.3% of excess over \$24,000.

C. For single individuals and for estates and trusts:

If the taxable income is:	The tax shall be:
Not over \$5,500	1.7% of taxable income
Over \$5,500 but not over \$11,000	\$93.50 plus 3.2% of excess over \$5,500
Over \$11,000 but not over \$16,000	\$269.50 plus 4.7% of excess over \$11,000

Over \$12,000 \$384 plus 4.9% of
excess over \$12,000.

B. For surviving spouses and married individuals filing joint returns:

If the taxable income is:	The tax shall be:
Not over \$8,000	1.7% of taxable income
Over \$8,000 but not over \$16,000	\$136 plus 3.2% of excess over \$8,000
Over \$16,000 but not over \$24,000	\$392 plus 4.7% of excess over \$16,000
Over \$24,000	\$768 plus 4.9% of excess over \$24,000.

C. For single individuals and for estates and trusts:

If the taxable income is:	The tax shall be:
Not over \$5,500	1.7% of taxable income
Over \$5,500 but not over \$11,000	\$93.50 plus 3.2% of excess over \$5,500
Over \$11,000 but not over \$16,000	\$269.50 plus 4.7% of excess over \$11,000
Over \$16,000	\$504.50 plus 4.9% of excess over \$16,000.

D. For heads of household filing returns:

If the taxable income is:	The tax shall be:
Not over \$7,000	1.7% of taxable income
Over \$7,000 but not over \$14,000	\$119 plus 3.2% of excess over \$7,000
Over \$14,000 but not over \$20,000	\$343 plus 4.7% of excess over \$14,000
Over \$20,000	\$625 plus 4.9% of excess over \$20,000.

E. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income."

Section 7. Section 7-2-34 NMSA 1978 (being Laws 1999, Chapter 205, Section 1) is amended to read:

"7-2-34. DEDUCTION--NET CAPITAL GAIN INCOME.--

A. Except as provided in Subsection C of this section, a taxpayer may claim a deduction from net income in an amount equal to the greater of:

(1) the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed, but not to exceed one thousand dollars (\$1,000); or

(2) the following percentage of the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed:

(a) for a taxable year beginning in 2003, ten percent;

(b) for a taxable year beginning in 2004, twenty percent;

(c) for a taxable year beginning in 2005, thirty percent;

(d) for a taxable year beginning in 2006, forty percent; and

(e) for taxable years beginning on or after January 1, 2007, fifty percent.

B. 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 deduction provided by this section that would have been allowed on the joint return.

C. A taxpayer may not claim the deduction provided in Subsection A of this section if the taxpayer has claimed the credit provided in Section 7-2D-8.1 NMSA 1978.

D. As used in this section, "net capital gain" means "net capital gain" as defined in Section 1222 (11) of the Internal Revenue Code."

Section 8. EFFECTIVE DATE.--

A. The effective date of the provisions of Section 1 of this act is July 1, 2003.

B. The effective date of the provisions of Section 3 of this act is January 1, 2004.

C. The effective date of the provisions of Section 4 of this act is January 1, 2005.

D. The effective date of the provisions of Section 5 of this act is January 1, 2006.

E. The effective date of the provisions of Section 6 of this act is January 1, 2007.

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 167 & SENATE

BILL 167, AS AMENDED

CHAPTER 3

CHAPTER 3, LAWS 2003

AN ACT

RELATING TO DAYS OF SPECIAL OBSERVANCE; CHANGING THE HISPANIC CULTURE DAY OBSERVANCE TO ODD-NUMBERED YEARS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 12-5-13 NMSA 1978 (being Laws 2001, Chapter 193, Section 1) is amended to read:

"12-5-13. HISPANIC CULTURE DAY.--The second Tuesday of

February of each odd-numbered year shall be known and celebrated as "Hispanic culture day" in recognition of the many contributions, sacrifices and accomplishments of Hispanic people from throughout the world who have built New Mexico into a beautiful

and dynamic mosaic of cultural diversity. This day shall be observed with celebrations that honor all past, present and future Hispanic citizens and leaders in ways that enhance relationships among all the people of New Mexico."

HOUSE BILL 298

CHAPTER 4

CHAPTER 4, LAWS 2003

AN ACT

RELATING TO PUBLIC EMPLOYEES; ENACTING THE PUBLIC EMPLOYEE BARGAINING ACT.

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

Section 1. SHORT TITLE.--This act may be cited as the "Public Employee Bargaining Act".

Section 2. PURPOSE OF ACT.--The purpose of the Public Employee Bargaining Act is to guarantee public employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions.

Section 3. CONFLICTS.--In the event of conflict with other laws, the provisions of the Public Employee Bargaining Act shall supersede other previously enacted legislation and regulations; provided that the Public Employee Bargaining Act shall not supersede the provisions of the Bateman Act, the Personnel Act, Sections 10-7-1 through 10-7-19 NMSA 1978, the Group Benefits Act, the Per Diem and Mileage Act, the Retiree Health Care Act, public employee retirement laws or the Tort Claims Act.

Section 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 designated in Section 7 of the Public Employee Bargaining Act;

C. "authorization card" means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative;

D. "board" means the public employee labor relations board;

E. "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;

F. "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;

G. "confidential employee" means a person who devotes a majority of his time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies;

H. "emergency" means a one-time crisis that was unforeseen and unavoidable;

I. "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;

J. "fair share" means the payment to a labor organization which is the exclusive representative for an appropriate bargaining unit by an employee of that bargaining unit who is not a member of that labor organization equal to a certain percentage of membership dues. Such figure is to be calculated based on United States and New Mexico statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit under United States and New Mexico statutes and case law, including but not limited to all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the appropriate bargaining unit, servicing such contract and representing all such employees in grievances and disciplinary actions;

K. "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;

L. "labor organization" means an 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;

M. "local board" means a local labor relations board established by a public employer, other than the state, through ordinance, resolution or charter amendment;

N. "lockout" means an act by a public employer to prevent its employees from going to work for the purpose of resisting the demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative;

O. "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;

P. "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;

Q. "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;

R. "public employee" means a regular nonprobationary employee of a public employer; provided that, in the public schools, "public employee" shall also include a regular probationary employee;

S. "public employer" means the state or a political subdivision thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in Article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than state for collective bargaining purposes only;

T. "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

U. "supervisor" means an employee who devotes a majority 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 "supervisor" does not include an individual who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of his subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs.

Section 5. RIGHTS OF PUBLIC EMPLOYEES.--Public employees, other than management employees and confidential employees, may form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion and shall have the right to refuse any such activities.

Section 6. RIGHTS OF PUBLIC EMPLOYERS.--Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public employer may:

A. direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;

B. determine qualifications for employment and the nature and content of personnel examinations;

C. take actions as may be necessary to carry out the mission of the public employer in emergencies; and

D. retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

Section 7. APPROPRIATE GOVERNING BODY--PUBLIC EMPLOYER.--The appropriate governing body of a public employer is the policymaking individual or body representing the public employer. In the case of the state, the appropriate governing body is the governor or his designee or, in the case of a constitutionally created body, the constitutionally designated head of that body. At the local level, the appropriate governing body is the elected or

appointed representative body or individual charged with management of the local public body. In the event of dispute, the board shall determine the appropriate governing body.

Section 8. PUBLIC EMPLOYEE LABOR RELATIONS BOARD-- CREATED--TERMS--QUALIFICATIONS.--

A. The "public employee labor relations board" is created. The board consists of three members appointed by the governor. The governor shall appoint one member recommended by organized labor representatives actively involved in representing public employees, one member recommended by public employers actively involved in collective bargaining and one member jointly recommended by the other two appointees.

B. Except for appointments made in 2003, board members shall serve for a period of three years with terms commencing on July 1. Vacancies shall be filled by appointment by the governor in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A board member may serve an unlimited number of terms.

C. During the term for which he is appointed, a board member shall not hold or seek any other political office or public employment or be an employee of a labor organization or an organization representing public employees or public employers.

D. Each board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

E. For the purpose of making initial appointments to the board in 2003, the governor shall designate one member to serve a one-year term, one member to serve a two-year term and one member to serve a three-year term. Thereafter, all members shall be appointed for three-year terms.

Section 9. BOARD--POWERS AND DUTIES.--

A. The board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act, including the establishment of procedures for:

- (1) the designation of appropriate bargaining units;
- (2) the selection, certification and decertification of exclusive representatives; and
- (3) the filing of, hearing on and determination of complaints of prohibited practices.

B. The board shall:

(1) hold hearings and make inquiries necessary to carry out its functions and duties;

(2) conduct studies on problems pertaining to employee-employer relations; and

(3) request from public employers and labor organizations the information and data necessary to carry out the board's functions and responsibilities.

C. The board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence or documents relating to the matter in question. The board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The board shall decide issues by majority vote and shall issue its decisions in the form of written orders and opinions.

E. The board may hire personnel or contract with third parties as it deems necessary to assist it in carrying out its functions.

F. The board has the power to enforce provisions of the Public Employee Bargaining Act through the imposition of appropriate administrative remedies.

G. A rule promulgated by the board or a local board shall not require, directly or indirectly, as a condition of continuous employment, a public employee covered by the Public Employee Bargaining Act to pay money to a labor organization that is certified as an exclusive representative. The issue of fair share shall be left a permissive subject of bargaining by the public employer and the exclusive representative of each bargaining unit.

Section 10. LOCAL BOARD--CREATED.--

A. With the approval of the board, a public employer other than the state may, by ordinance, resolution or charter amendment, create a local board similar to the public employee labor relations board. Once created and approved, the local board shall assume the duties and responsibilities of the public employee labor relations board. A local board shall follow all procedures and provisions of the Public Employee Bargaining Act unless otherwise approved by the board.

B. The local board shall be composed of three members appointed by the public employer. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of

individuals representing management and one member shall be appointed on the recommendation of the first two appointees.

C. Local board members shall serve one-year terms. Local board members may serve an unlimited number of terms. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term.

D. During the term for which he is appointed, a local board member shall not hold or seek any other political office or public employment or be an employee of a union or an organization representing public employees or public employers.

E. Each local board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

Section 11. LOCAL BOARD--POWERS AND DUTIES.--

A. The local board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act, including the establishment of procedures for:

- (1) the designation of appropriate bargaining units;
- (2) the selection, certification and decertification of exclusive representatives; and
- (3) the filing of, hearing on and determination of complaints of prohibited practices.

B. The local board shall:

- (1) hold hearings and make inquiries necessary to carry out its functions and duties;
- (2) request information and data from public employers and labor organizations to carry out the local board's functions and responsibilities; and
- (3) hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the local board in carrying out its functions.

C. The local board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence or documents relating to the matter in question. The local board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The local board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The local board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions.

E. The local board has the power to enforce provisions of the Public Employee Bargaining Act or a local collective bargaining ordinance, resolution or charter amendment through the imposition of appropriate administrative remedies.

Section 12. HEARING PROCEDURES.--

A. The board or local board may hold hearings for the purposes of:

(1) information gathering and inquiry;

(2) adopting rules; and

(3) adjudicating disputes and enforcing the provisions of the Public Employee Bargaining Act and rules adopted pursuant to that act.

B. The board or local board shall adopt rules setting forth procedures to be followed during hearings of the board or local board. The procedures adopted for conducting adjudicatory hearings shall meet all minimal due process requirements of the state and federal constitutions.

C. The board or local board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by the board or local board. At the conclusion of the hearing, the examiner shall prepare a written report, including findings and recommendations, all of which shall be submitted to the board or local board for its decision.

D. A rule proposed to be adopted by the board or local board that affects a person or governmental entity outside of the board or local board and its staff shall not be adopted, amended or repealed without public hearing and comment on the proposed action before the board or local board. The public hearing shall be held after notice of the subject matter of the rule, 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, proposed amendment or repeal of an existing rule may be obtained. All meetings of the board shall be held in Santa Fe. All meetings of local boards shall be held in the county of residence of the local public employer. Notice shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state or, in the case of a local board hearing, in a newspaper of general circulation in the county, and notice shall be mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

E. All adopted rules shall be filed in accordance with applicable state statutes.

F. A verbatim record made by electronic or other suitable means shall be made of every rulemaking and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the board or local board.

Section 13. APPROPRIATE BARGAINING UNITS.--

A. The board or local board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved. Occupational groups shall generally be identified as blue-collar, secretarial clerical, technical, professional, paraprofessional, police, fire and corrections. The parties, by mutual agreement, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.

B. Within thirty days of a disagreement arising between a public employer and a labor organization concerning the composition of an appropriate bargaining unit, the board or local board shall hold a hearing concerning the composition of the bargaining unit before designating an appropriate bargaining unit.

C. The board or local board shall not include in an appropriate bargaining unit supervisors, managers or confidential employees.

Section 14. ELECTIONS.--

A. Whenever, in accordance with rules prescribed by the board or local board, a petition is filed by a labor organization containing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit, the board or local board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

B. Once a labor organization has filed a valid petition with the board or local board calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the signatures of not less than thirty percent of the public employees in the appropriate bargaining unit no later than ten days after the board or the local board and the public

employer post a written notice that the petition in Subsection A of this section has been filed by a labor organization.

C. As an alternative to the provisions of Subsection A of this section, a public employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The board or local board shall not certify an appropriate bargaining unit if the public employer objects to the certification without an election.

D. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Within fifteen days of an election in which no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The board or local board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the board or local board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit.

E. An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section 16 of the Public Employee Bargaining Act.

Section 15. EXCLUSIVE REPRESENTATION.--

A. A labor organization that has been certified by the board or local board as representing the public employees in the appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization.

B. This section does not prevent a public employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative.

Section 16. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.-

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A. A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the public employees in the appropriate bargaining unit make a written request to the board or local board for a decertification election. Decertification elections shall be held in a manner prescribed by rule of the board. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the board or local board no earlier than ninety days and no later than sixty days before the expiration of the collective bargaining agreement; provided, however, a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

C. When, within the time period prescribed in Subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the board or local board shall not accept a request for a decertification election earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

Section 17. SCOPE OF BARGAINING.--

A. Except for retirement programs provided pursuant to the Public Employees Retirement Act or the Educational Retirement Act, public employers and exclusive representatives:

(1) shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the public employer nor the exclusive representative shall be required to agree to a proposal or to make a concession; and

(2) shall enter into written collective bargaining agreements covering employment relations.

B. The obligation to bargain collectively imposed by the Public Employee Bargaining Act shall not be construed as authorizing a public employer and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state. In the event of conflict between the provisions of any other

statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

C. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. The public employer shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and for so long as the labor organization is certified as the exclusive representative. During the time that a board certification is in effect for a particular appropriate bargaining unit, the public employer shall not deduct dues for any other labor organization.

D. The scope of bargaining for representatives of public schools as well as educational employees in state agencies shall include, as a mandatory subject of bargaining, the impact of professional and instructional decisions made by the employer.

E. An impasse resolution or an agreement provision by the state and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature and the availability of funds. An impasse resolution or an agreement provision by a public employer other than the state or the public schools and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the appropriate governing body and the availability of funds. An agreement provision by a local school board and an exclusive representative that requires the expenditure of funds shall be contingent upon ratification by the appropriate governing body. An arbitration decision shall not require the reappropriation of funds.

F. An agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination. The final determination shall constitute an arbitration award within the meaning of the Uniform Arbitration Act; such award shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act. The costs of an arbitration proceeding conducted pursuant to this subsection shall be shared equally by the parties.

G. The following meetings shall be closed:

(1) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the public employer and the exclusive representative of the public employees of the public employer;

(2) collective bargaining sessions; and

(3) consultations and impasse resolution procedures at which the public employer and the exclusive representative of the appropriate bargaining unit are present.

Section 18. IMPASSE RESOLUTION.--

A. The following negotiations and impasse procedures shall be followed by the state and exclusive representatives for state employees:

(1) a request to the state for the commencement of initial negotiations shall be filed in writing by the exclusive representative no later than June 1 of the year in which negotiations are to take place. Negotiations shall begin no later than July 1 of that year;

(2) in subsequent years, negotiations agreed to by the parties shall begin no later than August 1 following the submission of written notice to the state by the exclusive representative no later than July 1 of the year in which negotiations are to take place;

(3) if an impasse occurs during negotiations between the parties, and if an agreement is not reached by the parties by October 1, either party may request mediation services from the board. A mediator from the federal mediation and conciliation service shall be assigned by the board to assist in negotiations unless the parties agree to another mediator;

(4) the mediator shall provide services to the parties until the parties reach agreement or the mediator believes that mediation services are no longer helpful or until November 1, whichever occurs first; and

(5) if the impasse continues after November 1, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection E of Section 17 of the Public Employee Bargaining Act and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of his or her selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

B. The following impasse procedures shall be followed by all public employers and exclusive representatives, except the state and the state's exclusive representatives:

(1) if an impasse occurs, either party may request from the board or local board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator with the federal mediation and conciliation service shall be assigned by the board or local board to assist negotiations unless the parties agree to another mediator; and

(2) if the impasse continues after a thirty-day mediation period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection E of Section 17 of the Public Employee Bargaining Act and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of his or her selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

C. A public employer other than the state may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

D. In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require the public employer to increase any employees' levels, steps or grades of compensation contained in the existing contract.

Section 19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES.--A public employer or his representative shall not:

A. discriminate against a public employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

B. interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act;

C. dominate or interfere in the formation, existence or administration of a labor organization;

D. discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization;

E. discharge or otherwise discriminate against a public employee because he has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization;

F. refuse to bargain collectively in good faith with the exclusive representative;

G. refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule; or

H. refuse or fail to comply with a collective bargaining agreement.

**Section 20. PUBLIC EMPLOYEES--LABOR ORGANIZATIONS--
PROHIBITED PRACTICES.--A public employee or labor organization
or its representative shall not:**

A. discriminate against a public employee with regard to labor organization membership because of race, color, religion, creed, age, sex or national origin;

B. interfere with, restrain or coerce any public employee in the exercise of a right guaranteed pursuant to the provisions of the Public Employee Bargaining Act;

C. refuse to bargain collectively in good faith with a public employer;

D. refuse or fail to comply with a collective bargaining or other agreement with the public employer;

E. refuse or fail to comply with a provision of the Public Employee Bargaining Act; or

F. picket homes or private businesses of elected officials or public employees.

Section 21. STRIKES AND LOCKOUTS PROHIBITED.--

A. A public employee or labor organization shall not engage in a strike. A labor organization shall not cause, instigate, encourage or support a public employee strike. A public employer shall not cause, instigate or engage in a public employee lockout.

B. A public employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

C. The board or local board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated a public employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation.

Section 22. AGREEMENTS VALID--ENFORCEMENT.--Collective bargaining agreements and other agreements between public employers and exclusive representatives shall be valid and enforceable according to their terms when entered into in accordance with the provisions of the Public Employee Bargaining Act.

Section 23. JUDICIAL ENFORCEMENT--STANDARD OF REVIEW.--

A. The board or local board may request the district court to enforce orders issued pursuant to the Public Employee Bargaining Act, including those for appropriate temporary relief and restraining orders. The court shall consider the request for enforcement on the record made before the board or local board. It shall uphold the action of the board or local board and take appropriate action to enforce it unless it concludes that the order is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record considered as a whole; or
- (3) otherwise not in accordance with law.

B. A person or party, including a labor organization affected by a final rule, order or decision of the board or local board, may appeal to the district court for further relief. All such appeals shall be based upon the record made at the board or local board hearing. All such appeals to the district court shall be taken within thirty days of the date of the final rule, order or decision of the board or local board. Actions taken by the board or local board shall be affirmed unless the court concludes that the action is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record considered as a whole; or
- (3) otherwise not in accordance with the law.

Section 24. EXISTING COLLECTIVE BARGAINING UNITS.--

A. Bargaining units established prior to July 1, 1999 shall continue to be recognized as appropriate bargaining units for the purposes of the Public Employee Bargaining Act. Bargaining units established between July 1, 1999 and the effective date of that act shall continue in effect only if the unit is covered by a collective bargaining agreement on the date of this act.

B. A labor organization that was recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit on the effective date of the Public Employee Bargaining Act; provided, however, that the public employer shall not enter into a new collective bargaining agreement pursuant to this subsection unless the labor organization demonstrates majority support to the public employer pursuant to Section 14 of the Public Employee Bargaining Act. A labor organization which attempts and fails to show majority support shall no longer be recognized as the exclusive bargaining representative of that unit.

Section 25. EXISTING COLLECTIVE BARGAINING AGREEMENTS.--
Nothing in the Public Employee Bargaining Act shall be construed to annul or modify a collective bargaining agreement entered into between a public employer and an exclusive representative prior to the effective date of the Public Employee Bargaining Act. Nor shall anything in the Public Employee Bargaining Act be construed to annul or modify the status of an existing or recognized exclusive representative.

Section 26. EXISTING ORDINANCES PROVIDING FOR PUBLIC EMPLOYEE BARGAINING.--

A. A public employer other than the state that prior to October 1, 1991 adopted by ordinance, resolution or charter amendment a system of provisions and procedures permitting employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives may continue to operate under those provisions and procedures. Any substantial change after January 1, 2003 to any ordinance, resolution or charter amendment shall subject the public employer to full compliance with the provisions of Subsection B of Section 26 of the Public Employee Bargaining Act.

B. A public employer other than the state that subsequent to October 1, 1991 adopts by ordinance, resolution or charter amendment a system of provisions and procedures permitting employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives freely chosen by its employees may operate under those provisions and procedures rather than those set forth in the Public Employee Bargaining Act; provided that the employer shall comply with the provisions of Sections 8 through 12 and Subsection D of Section 17 of that act

and provided the following provisions and procedures are included in each ordinance, resolution or charter amendment:

(1) the right of public employees to form, join or assist employee organizations for the purpose of achieving collective bargaining;

(2) procedures for the identification of appropriate bargaining units, certification elections and decertification elections equivalent to those set forth in the Public Employee Bargaining Act;

(3) the right of a labor organization to be certified as an exclusive representative;

(4) the right of an exclusive representative to negotiate all wages, hours and other terms and conditions of employment for public employees in the appropriate bargaining unit;

(5) the obligation to incorporate agreements reached by the public employer and the exclusive representative into a collective bargaining agreement;

(6) a requirement that grievance procedures culminating with binding arbitration be negotiated;

(7) a requirement that payroll deductions for the exclusive representative's membership dues be negotiated if requested by the exclusive representative;

(8) impasse resolution procedures equivalent to those set forth in Section 18 of the Public Employee Bargaining Act; and

(9) prohibited practices for the public employer, public employees and labor organizations that promote the principles established in Sections 19 through 21 of the Public Employee Bargaining Act.

Section 27. SEVERABILITY.--If any part or application of the Public Employee Bargaining Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 28. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

CHAPTER 5

CHAPTER 5, LAWS 2003

AN ACT

RELATING TO PUBLIC EMPLOYEES; ENACTING THE PUBLIC EMPLOYEE BARGAINING ACT; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the "Public Employee Bargaining Act".

Section 2. PURPOSE OF ACT.--The purpose of the Public Employee Bargaining Act is to guarantee public employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions.

Section 3. CONFLICTS.--In the event of conflict with other laws, the provisions of the Public Employee Bargaining Act shall supersede other previously enacted legislation and regulations; provided that the Public Employee Bargaining Act shall not supersede the provisions of the Bateman Act, the Personnel Act, Sections 10-7-1 through 10-7-19 NMSA 1978, the Group Benefits Act, the Per Diem and Mileage Act, the Retiree Health Care Act, public employee retirement laws or the Tort Claims Act.

Section 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 designated in Section 7 of the Public Employee Bargaining Act;

C. "authorization card" means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative;

D. "board" means the public employee labor relations board;

E. "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;

F. "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;

G. "confidential employee" means a person who devotes a majority of his time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies;

H. "emergency" means a one-time crisis that was unforeseen and unavoidable;

I. "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;

J. "fair share" means the payment to a labor organization which is the exclusive representative for an appropriate bargaining unit by an employee of that bargaining unit who is not a member of that labor organization equal to a certain percentage of membership dues. Such figure is to be calculated based on United States and New Mexico statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit under United States and New Mexico statutes and case law, including but not limited to all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the appropriate bargaining unit, servicing such contract and representing all such employees in grievances and disciplinary actions;

K. "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;

L. "labor organization" means an 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;

M. "local board" means a local labor relations board established by a public employer, other than the state, through ordinance, resolution or charter amendment;

N. "lockout" means an act by a public employer to prevent its employees from going to work for the purpose of resisting the demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative;

O. "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;

P. "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;

Q. "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;

R. "public employee" means a regular nonprobationary employee of a public employer; provided that, in the public schools, "public employee" shall also include a regular probationary employee;

S. "public employer" means the state or a political subdivision thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in Article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than state for collective bargaining purposes only;

T. "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

U. "supervisor" means an employee who devotes a majority 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 "supervisor" does not include an individual who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of his subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs.

Section 5. RIGHTS OF PUBLIC EMPLOYEES.--Public employees, other than management employees and confidential employees, may form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion and shall have the right to refuse any such activities.

Section 6. RIGHTS OF PUBLIC EMPLOYERS.--Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public employer may:

A. direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;

B. determine qualifications for employment and the nature and content of personnel examinations;

C. take actions as may be necessary to carry out the mission of the public employer in emergencies; and

D. retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

Section 7. APPROPRIATE GOVERNING BODY--PUBLIC EMPLOYER.--The appropriate governing body of a public employer is the policymaking individual or body representing the public employer. In the case of the state, the appropriate governing body is the governor or his designee or, in the case of a constitutionally created body, the constitutionally designated head of that body. At the local level, the appropriate governing body is the elected or appointed representative body or individual charged with management of the local public body. In the event of dispute, the board shall determine the appropriate governing body.

Section 8. PUBLIC EMPLOYEE LABOR RELATIONS BOARD-- CREATED--TERMS--QUALIFICATIONS.--

A. The "public employee labor relations board" is created. The board consists of three members appointed by the governor. The governor shall appoint one member recommended by organized labor representatives actively involved in representing public employees, one member recommended by public employers actively involved in collective bargaining and one member jointly recommended by the other two appointees.

B. Except for appointments made in 2003, board members shall serve for a period of three years with terms commencing on July 1. Vacancies shall be filled by appointment by the governor in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A board member may serve an unlimited number of terms.

C. During the term for which he is appointed, a board member shall not hold or seek any other political office or public employment or be an employee of a labor organization or an organization representing public employees or public employers.

D. Each board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

E. For the purpose of making initial appointments to the board in 2003, the governor shall designate one member to serve a one-year term, one member to serve a two-year term and one member to serve a three-year term. Thereafter, all members shall be appointed for three-year terms.

Section 9. BOARD--POWERS AND DUTIES.--

A. The board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act, including the establishment of procedures for:

- (1) the designation of appropriate bargaining units;
- (2) the selection, certification and decertification of exclusive representatives; and
- (3) the filing of, hearing on and determination of complaints of prohibited practices.

B. The board shall:

- (1) hold hearings and make inquiries necessary to carry out its functions and duties;

(2) conduct studies on problems pertaining to employee-employer relations; and

(3) request from public employers and labor organizations the information and data necessary to carry out the board's functions and responsibilities.

C. The board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence or documents relating to the matter in question. The board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The board shall decide issues by majority vote and shall issue its decisions in the form of written orders and opinions.

E. The board may hire personnel or contract with third parties as it deems necessary to assist it in carrying out its functions.

F. The board has the power to enforce provisions of the Public Employee Bargaining Act through the imposition of appropriate administrative remedies.

G. A rule promulgated by the board or a local board shall not require, directly or indirectly, as a condition of continuous employment, a public employee covered by the Public Employee Bargaining Act to pay money to a labor organization that is certified as an exclusive representative. The issue of fair share shall be left a permissive subject of bargaining by the public employer and the exclusive representative of each bargaining unit.

Section 10. LOCAL BOARD--CREATED.--

A. With the approval of the board, a public employer other than the state may, by ordinance, resolution or charter amendment, create a local board similar to the public employee labor relations board. Once created and approved, the local board shall assume the duties and responsibilities of the public employee labor relations board. A local board shall follow all procedures and provisions of the Public Employee Bargaining Act unless otherwise approved by the board.

B. The local board shall be composed of three members appointed by the public employer. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of individuals representing management and one member shall be appointed on the recommendation of the first two appointees.

C. Local board members shall serve one-year terms. Local board members may serve an unlimited number of terms. Vacancies shall be filled in the same

manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term.

D. During the term for which he is appointed, a local board member shall not hold or seek any other political office or public employment or be an employee of a union or an organization representing public employees or public employers.

E. Each local board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

Section 11. LOCAL BOARD--POWERS AND DUTIES.--

A. The local board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act, including the establishment of procedures for:

- (1) the designation of appropriate bargaining units;
- (2) the selection, certification and decertification of exclusive representatives; and
- (3) the filing of, hearing on and determination of complaints of prohibited practices.

B. The local board shall:

- (1) hold hearings and make inquiries necessary to carry out its functions and duties;
- (2) request information and data from public employers and labor organizations to carry out the local board's functions and responsibilities; and
- (3) hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the local board in carrying out its functions.

C. The local board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence or documents relating to the matter in question. The local board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The local board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The local board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions.

E. The local board has the power to enforce provisions of the Public Employee Bargaining Act or a local collective bargaining ordinance, resolution or charter amendment through the imposition of appropriate administrative remedies.

Section 12. HEARING PROCEDURES.--

A. The board or local board may hold hearings for the purposes of:

(1) information gathering and inquiry;

(2) adopting rules; and

(3) adjudicating disputes and enforcing the provisions of the Public Employee Bargaining Act and rules adopted pursuant to that act.

B. The board or local board shall adopt rules setting forth procedures to be followed during hearings of the board or local board. The procedures adopted for conducting adjudicatory hearings shall meet all minimal due process requirements of the state and federal constitutions.

C. The board or local board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by the board or local board. At the conclusion of the hearing, the examiner shall prepare a written report, including findings and recommendations, all of which shall be submitted to the board or local board for its decision.

D. A rule proposed to be adopted by the board or local board that affects a person or governmental entity outside of the board or local board and its staff shall not be adopted, amended or repealed without public hearing and comment on the proposed action before the board or local board. The public hearing shall be held after notice of the subject matter of the rule, 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, proposed amendment or repeal of an existing rule may be obtained. All meetings of the board shall be held in Santa Fe. All meetings of local boards shall be held in the county of residence of the local public employer. Notice shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state or, in the case of a local board hearing, in a newspaper of general circulation in the county, and notice shall be mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

E. All adopted rules shall be filed in accordance with applicable state statutes.

F. A verbatim record made by electronic or other suitable means shall be made of every rulemaking and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the board or local board.

Section 13. APPROPRIATE BARGAINING UNITS.--

A. The board or local board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved. Occupational groups shall generally be identified as blue-collar, secretarial clerical, technical, professional, paraprofessional, police, fire and corrections. The parties, by mutual agreement, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.

B. Within thirty days of a disagreement arising between a public employer and a labor organization concerning the composition of an appropriate bargaining unit, the board or local board shall hold a hearing concerning the composition of the bargaining unit before designating an appropriate bargaining unit.

C. The board or local board shall not include in an appropriate bargaining unit supervisors, managers or confidential employees.

Section 14. ELECTIONS.--

A. Whenever, in accordance with rules prescribed by the board or local board, a petition is filed by a labor organization containing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit, the board or local board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

B. Once a labor organization has filed a valid petition with the board or local board calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the signatures of not less than thirty percent of the public employees in the appropriate bargaining unit no later than ten days after the board or the local board and the public

employer post a written notice that the petition in Subsection A of this section has been filed by a labor organization.

C. As an alternative to the provisions of Subsection A of this section, a public employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The board or local board shall not certify an appropriate bargaining unit if the public employer objects to the certification without an election.

D. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Within fifteen days of an election in which no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The board or local board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the board or local board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit.

E. An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section 16 of the Public Employee Bargaining Act.

Section 15. EXCLUSIVE REPRESENTATION.--

A. A labor organization that has been certified by the board or local board as representing the public employees in the appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization.

B. This section does not prevent a public employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative.

Section 16. DECERTIFICATION OF EXCLUSIVE

REPRESENTATIVE.--

A. A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the public employees in the appropriate bargaining unit make a written request to the board or local board for a decertification election. Decertification elections shall be held in a manner prescribed by rule of the board. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the board or local board no earlier than ninety days and no later than sixty days before the expiration of the collective bargaining agreement; provided, however, a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

C. When, within the time period prescribed in Subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the board or local board shall not accept a request for a decertification election earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

Section 17. SCOPE OF BARGAINING.--

A. Except for retirement programs provided pursuant to the Public Employees Retirement Act or the Educational Retirement Act, public employers and exclusive representatives:

(1) shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the public employer nor the exclusive representative shall be required to agree to a proposal or to make a concession; and

(2) shall enter into written collective bargaining agreements covering employment relations.

B. The obligation to bargain collectively imposed by the Public Employee Bargaining Act shall not be construed as authorizing a public employer and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state. In the event of conflict between the provisions of any other

statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

C. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. The public employer shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and for so long as the labor organization is certified as the exclusive representative. During the time that a board certification is in effect for a particular appropriate bargaining unit, the public employer shall not deduct dues for any other labor organization.

D. The scope of bargaining for representatives of public schools as well as educational employees in state agencies shall include, as a mandatory subject of bargaining, the impact of professional and instructional decisions made by the employer.

E. An impasse resolution or an agreement provision by the state and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature and the availability of funds. An impasse resolution or an agreement provision by a public employer other than the state or the public schools and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the appropriate governing body and the availability of funds. An agreement provision by a local school board and an exclusive representative that requires the expenditure of funds shall be contingent upon ratification by the appropriate governing body. An arbitration decision shall not require the reappropriation of funds.

F. An agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination. The final determination shall constitute an arbitration award within the meaning of the Uniform Arbitration Act; such award shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act. The costs of an arbitration proceeding conducted pursuant to this subsection shall be shared equally by the parties.

G. The following meetings shall be closed:

(1) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the public employer and the exclusive representative of the public employees of the public employer;

(2) collective bargaining sessions; and

(3) consultations and impasse resolution procedures at which the public employer and the exclusive representative of the appropriate bargaining unit are present.

Section 18. IMPASSE RESOLUTION.--

A. The following negotiations and impasse procedures shall be followed by the state and exclusive representatives for state employees:

(1) a request to the state for the commencement of initial negotiations shall be filed in writing by the exclusive representative no later than June 1 of the year in which negotiations are to take place. Negotiations shall begin no later than July 1 of that year;

(2) in subsequent years, negotiations agreed to by the parties shall begin no later than August 1 following the submission of written notice to the state by the exclusive representative no later than July 1 of the year in which negotiations are to take place;

(3) if an impasse occurs during negotiations between the parties, and if an agreement is not reached by the parties by October 1, either party may request mediation services from the board. A mediator from the federal mediation and conciliation service shall be assigned by the board to assist in negotiations unless the parties agree to another mediator;

(4) the mediator shall provide services to the parties until the parties reach agreement or the mediator believes that mediation services are no longer helpful or until November 1, whichever occurs first; and

(5) if the impasse continues after November 1, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection E of Section 17 of the Public Employee Bargaining Act and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of his or her selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

B. The following impasse procedures shall be followed by all public employers and exclusive representatives, except the state and the state's exclusive representatives:

(1) if an impasse occurs, either party may request from the board or local board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator with the federal mediation and conciliation service shall be assigned by the board or local board to assist negotiations unless the parties agree to another mediator; and

(2) if the impasse continues after a thirty-day mediation period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection E of Section 17 of the Public Employee Bargaining Act and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of his or her selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

C. A public employer other than the state may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

D. In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require the public employer to increase any employees' levels, steps or grades of compensation contained in the existing contract.

Section 19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES.--A public employer or his representative shall not:

A. discriminate against a public employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

B. interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act;

C. dominate or interfere in the formation, existence or administration of a labor organization;

D. discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization;

E. discharge or otherwise discriminate against a public employee because he has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization;

F. refuse to bargain collectively in good faith with the exclusive representative;

G. refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule; or

H. refuse or fail to comply with a collective bargaining agreement.

Section 20. PUBLIC EMPLOYEES--LABOR ORGANIZATIONS--PROHIBITED PRACTICES.--A public employee or labor organization or its representative shall not:

A. discriminate against a public employee with regard to labor organization membership because of race, color, religion, creed, age, sex or national origin;

B. interfere with, restrain or coerce any public employee in the exercise of a right guaranteed pursuant to the provisions of the Public Employee Bargaining Act;

C. refuse to bargain collectively in good faith with a public employer;

D. refuse or fail to comply with a collective bargaining or other agreement with the public employer;

E. refuse or fail to comply with a provision of the Public Employee Bargaining Act; or

F. picket homes or private businesses of elected officials or public employees.

Section 21. STRIKES AND LOCKOUTS PROHIBITED.--

A. A public employee or labor organization shall not engage in a strike. A labor organization shall not cause, instigate, encourage or support a public employee strike. A public employer shall not cause, instigate or engage in a public employee lockout.

B. A public employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

C. The board or local board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated a public employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation.

Section 22. AGREEMENTS VALID--ENFORCEMENT.--Collective bargaining agreements and other agreements between public employers and exclusive representatives shall be valid and enforceable according to their terms when entered into in accordance with the provisions of the Public Employee Bargaining Act.

Section 23. JUDICIAL ENFORCEMENT--STANDARD OF REVIEW.--

A. The board or local board may request the district court to enforce orders issued pursuant to the Public Employee Bargaining Act, including those for appropriate temporary relief and restraining orders. The court shall consider the request for enforcement on the record made before the board or local board. It shall uphold the action of the board or local board and take appropriate action to enforce it unless it concludes that the order is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record considered as a whole; or
- (3) otherwise not in accordance with law.

B. A person or party, including a labor organization affected by a final rule, order or decision of the board or local board, may appeal to the district court for further relief. All such appeals shall be based upon the record made at the board or local board hearing. All such appeals to the district court shall be taken within thirty days of the date of the final rule, order or decision of the board or local board. Actions taken by the board or local board shall be affirmed unless the court concludes that the action is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record considered as a whole; or
- (3) otherwise not in accordance with law.

Section 24. EXISTING COLLECTIVE BARGAINING UNITS.--

A. Bargaining units established prior to July 1, 1999 shall continue to be recognized as appropriate bargaining units for the purposes of the Public Employee Bargaining Act. Bargaining units established between July 1, 1999 and the effective date of that act shall continue in effect only if the unit is covered by a collective bargaining agreement on the date of this act.

B. A labor organization that was recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit on the effective date of the Public Employee Bargaining Act; provided, however, that the public employer shall not enter into a new collective bargaining agreement pursuant to this subsection unless the labor organization demonstrates majority support to the public employer pursuant to Section 14 of the Public Employee Bargaining Act. A labor organization which attempts and fails to show majority support shall no longer be recognized as the exclusive bargaining representative of that unit.

Section 25. EXISTING COLLECTIVE BARGAINING

AGREEMENTS.-- Nothing in the Public Employee Bargaining Act shall be construed to annul or modify a collective bargaining agreement entered into between a public employer and an exclusive representative prior to the effective date of the Public Employee Bargaining Act. Nor shall anything in the Public Employee Bargaining Act be construed to annul or modify the status of an existing or recognized exclusive representative.

Section 26. EXISTING ORDINANCES PROVIDING FOR PUBLIC EMPLOYEE BARGAINING.--

A. A public employer other than the state that prior to October 1, 1991 adopted by ordinance, resolution or charter amendment a system of provisions and procedures permitting employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives may continue to operate under those provisions and procedures. Any substantial change after January 1, 2003 to any ordinance, resolution or charter amendment shall subject the public employer to full compliance with the provisions of Subsection B of Section 26 of the Public Employee Bargaining Act.

B. A public employer other than the state that subsequent to October 1, 1991 adopts by ordinance, resolution or charter amendment a system of provisions and procedures permitting employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives freely chosen by its employees may operate under those provisions and procedures rather than those set forth in the Public Employee Bargaining Act; provided that the employer shall comply with the provisions of Sections 8 through 12 and Subsection D of Section 17 of that act and provided the following provisions and procedures are included in each ordinance, resolution or charter amendment:

(1) the right of public employees to form, join or assist employee organizations for the purpose of achieving collective bargaining;

(2) procedures for the identification of appropriate bargaining units, certification elections and decertification elections equivalent to those set forth in the Public Employee Bargaining Act;

(3) the right of a labor organization to be certified as an exclusive representative;

(4) the right of an exclusive representative to negotiate all wages, hours and other terms and conditions of employment for public employees in the appropriate bargaining unit;

(5) the obligation to incorporate agreements reached by the public employer and the exclusive representative into a collective bargaining agreement;

(6) a requirement that grievance procedures culminating with binding arbitration be negotiated;

(7) a requirement that payroll deductions for the exclusive representative's membership dues be negotiated if requested by the exclusive representative;

(8) impasse resolution procedures equivalent to those set forth in Section 18 of the Public Employee Bargaining Act; and

(9) prohibited practices for the public employer, public employees and labor organizations that promote the principles established in Sections 19 through 21 of the Public Employee Bargaining Act.

Section 27. SEVERABILITY.--If any part or application of the Public Employee Bargaining Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 28. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 46, AS AMENDED

CHAPTER 6

CHAPTER 6, LAWS 2003

AN ACT

RELATING TO DISTRIBUTION OF SESSION LAWS; CHANGING THE DISTRIBUTION OF SESSION LAWS FROM AN AUTOMATIC DISTRIBUTION TO A DISTRIBUTION UPON REQUEST.

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

Section 1. Section 8-4-6 NMSA 1978 (being Laws 1973, Chapter 248, Section 1, as amended) is amended to read:

"8-4-6. DISTRIBUTION OF SESSION LAWS.--

A. The secretary of state shall transmit copies of the session laws without charge as follows:

- (1) one copy to each New Mexico supreme court justice;
- (2) one copy to each New Mexico court of appeals judge;
- (3) one copy to each New Mexico district court judge;
- (4) five copies to the New Mexico attorney general;
- (5) two copies to each New Mexico district attorney;
- (6) one copy to the board of county commissioners of each county;
- (7) copies to other state officers and agencies, or additional copies to legislators upon request by the clerks of each house by January 30 and to those listed above if the copies or additional copies are needed for governmental purposes and are not to replace lost volumes; and
- (8) copies to the New Mexico supreme court law library as may be required for exchange of similar materials with officers and agencies of the federal government, other states, districts, territories or possessions of the United States.

B. Copies of session laws supplied to officers and agencies of this state remain the property of the state and shall be delivered to their successors.

C. Whenever it is necessary to replace a volume of the session laws, because of the loss of the original volume, the secretary of state shall charge the officer or agency the same price that would be charged if it were sold to a private individual,

and the money from the sale shall be deposited in the fund it would be deposited in if it resulted from a sale to a private individual."

SENATE BILL 25, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 7

CHAPTER 7, LAWS 2003

AN ACT

RELATING TO WATER QUALITY; PROVIDING FOR RESIDENTIAL LANDSCAPE USE OF GRAY WATER; AMENDING SECTIONS OF THE WATER QUALITY ACT; DECLARING AN EMERGENCY.

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

Section 1. Section 74-6-2 NMSA 1978 (being Laws 1967, Chapter 190, Section 2, as amended) is amended to read:

"74-6-2. DEFINITIONS.--As used in the Water Quality Act:

A. "gray water" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;

B. "water contaminant" means any substance that could alter, if discharged or spilled, the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the federal Atomic Energy Act of 1954;

C. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;

D. "wastes" means sewage, industrial wastes or any other liquid, gaseous or solid substance that may pollute any waters of the state;

E. "sewer system" means pipelines, conduits, pumping stations, force mains or any other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

F. "treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;

G. "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

H. "water" means all water, including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

I. "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;

J. "commission" means the water quality control commission;

K. "constituent agency" means, as the context may require, any or all of the following agencies of the state:

(1) the department of environment;

(2) the state engineer and the interstate stream commission;

(3) the department of game and fish;

(4) the oil conservation commission;

(5) the state parks division of the energy, minerals and natural resources department;

(6) the New Mexico department of agriculture;

(7) the soil and water conservation commission; and

(8) the bureau of geology and mineral resources at the New Mexico institute of mining and technology;

L. "new source" means:

(1) any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance applicable to the source; or

(2) any existing source when modified to treat substantial additional volumes or when there is a substantial change in the character of water contaminants treated;

M. "source" means a building, structure, facility or installation from which there is or may be a discharge of water contaminants directly or indirectly into water;

N. "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank for maintenance or disposal purposes;

O. "sludge" means solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility that is associated with the treatment of these wastes. "Sludge" does not mean treated effluent from a wastewater treatment plant;

P. "substantial adverse environmental impact" means that an act or omission of the violator causes harm or damage:

(1) to human beings; or

(2) that amounts to more than ten thousand dollars (\$10,000) damage or mitigation costs to flora, including agriculture crops; fish or other aquatic life; waterfowl or other birds; livestock or wildlife or damage to their habitats; ground water or surface water; or the lands of the state;

Q. "federal act" means the Federal Water Pollution Control Act, its subsequent amendment and successor provisions; and

R. "standards of performance" means any standard, effluent limitation or effluent standard adopted pursuant to the federal act or the Water Quality Act."

Section 2. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended by Laws 2001, Chapter 240, Section 1 and by Laws 2001, Chapter 281, Section 1) is amended to read:

"74-6-4. DUTIES AND POWERS OF COMMISSION.--The commission:

A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality management program and develop a continuing planning process;

C. shall adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act. The standards shall include narrative standards and as appropriate, the designated uses of the waters and the water quality criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes;

D. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act. Regulations shall not specify the method to be used to prevent or abate water pollution but may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants. In making regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including:

(1) character and degree of injury to or interference with health, welfare, environment and property;

(2) the public interest, including the social and economic value of the sources of water contaminants;

(3) technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;

(4) successive uses, including but not limited to domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;

(5) feasibility of a user or a subsequent user treating the water before a subsequent use;

(6) property rights and accustomed uses; and

(7) federal water quality requirements;

E. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as to jurisdiction concerning any matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department of environment shall provide technical services, including certification of permits pursuant to the federal act, and shall maintain a repository of the scientific data required by this act;

F. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act and receive and allocate to constituent agencies funds made available to the commission;

G. may grant an individual variance from any regulation of the commission whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

H. may adopt regulations to require the filing with it or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

I. may adopt regulations requiring notice to it or a constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state;

J. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

K. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with such irrigation that documentation or actual case history has shown to be hazardous to public health or the environment;

L. shall not require a permit for applying less than two hundred fifty gallons per day of private residential gray water originating from a residence for the resident's household gardening, composting or landscape irrigation if:

(1) a constructed gray water distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

(2) a gray water storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

(3) a gray water system is sited outside of a floodway;

(4) gray water is vertically separated at least five feet above the ground water table;

(5) gray water pressure piping is clearly identified as a nonpotable water conduit;

(6) gray water is used on the site where it is generated and does not run off the property lines;

(7) gray water is applied in a manner that minimizes the potential for contact with people or domestic pets;

(8) ponding is prohibited, application of gray water is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

(9) gray water is not sprayed;

(10) gray water is not discharged to a watercourse; and

(11) gray water use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978; and

M. shall coordinate application procedures and funding cycles for loans and grants from the federal government and from other sources, public or private, with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act."

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

HOUSE BILL 114, AS AMENDED,
WITH EMERGENCY CLAUSE,
SIGNED MARCH 10, 2003

CHAPTER 8

CHAPTER 8, LAWS 2003

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL ACT TO PROVIDE STANDARDS FOR COTTON GINS AND OTHER SEASONAL AGRICULTURAL OPERATIONS.

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

Section 1. Section 74-2-7 NMSA 1978 (being Laws 1972, Chapter 51, Section 4, as amended) is amended to read:

"74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

A. By regulation, the environmental improvement board or the local board shall require:

(1) a person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from the department or the local agency prior to such construction or modification; and

(2) a person intending to operate any source for which an operating permit is required by the 1990 amendments to the federal act, except as otherwise specifically provided by regulation, to obtain an operating permit from the department or the local agency.

B. Regulations adopted by the environmental improvement board or the local board shall include at least the following provisions:

(1) requirements for the submission of relevant information, including information the department or the local agency deems necessary to determine that regulations and standards under the Air Quality Control Act or the federal act will not be violated;

(2) specification of the deadlines for processing permit applications; provided the deadline for a final decision by the department or the local agency on a construction permit application may not exceed:

(a) ninety days after the application is determined to be administratively complete, if the application is not subject to requirements for prevention of significant deterioration, unless the secretary or the director grants an extension not to exceed ninety days for good cause, including the need to have public hearings; or

(b) one hundred eighty days after the application is determined to be administratively complete, if the application is subject to requirements for prevention of significant deterioration, unless the secretary or the director grants an extension not to exceed ninety days for good cause, including the need to have public hearings;

(3) that if the department or local agency fails to take final action on a construction permit application within the deadlines specified in Paragraph (2) of this subsection, the department or local agency shall notify the applicant in writing that an extension of time is required to process the application and specify in detail the grounds for the extension;

(4) a description of elements required before the department or local agency shall deem an application administratively complete;

(5) specification of the public notice, comment period and public hearing, if any, required prior to the issuance of a permit; provided the permit regulations adopted:

(a) by the environmental improvement board shall include provisions governing notice to nearby states; and

(b) by any local board shall include provisions requiring that notice be given to the department of all permit applications by any source that emits, or has a potential emission rate of, one hundred tons per year or more of any regulated air contaminant, including any source of fugitive emissions of each regulated air contaminant, at least sixty days prior to the date on which construction or major modification is to commence;

(6) a schedule of construction permit fees sufficient to cover the reasonable costs of:

(a) reviewing and acting upon any application for such permit; and

(b) implementing and enforcing the terms and conditions of the permit, excluding any court costs or other costs associated with an enforcement action;

(7) a schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 amendments to the federal act;

(8) a method for accelerated permit processing that may be requested at the sole discretion of the applicant at the time the applicant submits a construction permit application and that:

(a) allows the department or local agency to contract with qualified outside firms to assist the department or local agency in its accelerated review of the construction permit application; provided that the department or local agency can contract with a qualified firm that does not have a conflict of interest; and

(b) establishes a process for the department or local agency to account for the expenditure of the accelerated permit processing fees;

(9) allowance for additional permit application fees, sufficient to cover the reasonable costs of an accelerated permit application review process. Before the applicant is notified that the permit application has been determined to be complete, the department or local agency shall give the applicant a reasonable estimate of costs of an accelerated permit application review process;

(10) specification of the maximum length of time for which a permit shall be valid; provided that for an operating permit such period may not exceed five years; and

(11) for an operating permit only:

(a) provisions consistent with Sections 502(b) and 505(b) of the federal act providing: 1) notice to and review and comment by the United States environmental protection agency; and 2) that if the department or local agency receives notice of objection from the United States environmental protection agency before the operating permit is issued, the department or the local agency shall not issue the permit unless it is revised and issued under Section 505(c) of the federal act;

(b) provisions governing renewal of the operating permit; and

(c) specification of the conditions under which the operating permit may be terminated, modified or revoked and reissued prior to the expiration of the term of the operating permit.

C. Except as provided in Subsection O of this section, the department or the local agency may deny any application for:

(1) a construction permit if it appears that the construction or modification:

(a) will not meet applicable standards, rules or requirements of the Air Quality Control Act or the federal act;

(b) will cause or contribute to air contaminant levels in excess of a national or state standard or, within the boundaries of a local authority, applicable local ambient air quality standards; or

(c) will violate any other provision of the Air Quality Control Act or the federal act; and

(2) an operating permit if the source will not meet the applicable standards, rules or requirements pursuant to the Air Quality Control Act or the federal act.

D. The department or the local agency may specify conditions to any permit granted under this section, including:

(1) for a construction permit:

(a) a requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the standards, rules and requirements of the Air Quality Control Act and the federal act;

(b) individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to meet the requirements of the Air Quality Control Act and the federal act or the emission rate specified in the permit application, whichever is more stringent;

(c) compliance with applicable federal standards of performance;

(d) reasonable restrictions and limitations not relating to emission limits or emission rates; or

(e) any combination of the conditions listed in this paragraph;
and

(2) for an operating permit, terms and conditions sufficient to ensure compliance with the applicable standards, rules and requirements pursuant to the Air Quality Control Act and the federal act.

E. This section does not authorize the department or the local agency to require the use of machinery, devices or equipment from a particular manufacturer if the federal standards of performance, state regulations and permit conditions may be met by machinery, devices or equipment otherwise available.

F. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act and any applicable regulations of the environmental improvement board or the local board. Any conditions placed upon a permit by the department or the local agency shall be enforceable to the same extent as a regulation of its board.

G. A person who participated in a permitting action before the department or the local agency shall be notified by the department or the local agency of the action taken and the reasons for the action. Notification of the applicant shall be by certified mail.

H. A person who participated in a permitting action before the department or the local agency and who is adversely affected by such permitting action may file a petition for hearing before the environmental improvement board or the local board. The petition shall be made in writing to the environmental improvement board or the local board within thirty days from the date notice is given of the department's or the local agency's action. Unless a timely petition for hearing is made, the decision of the department or the local agency shall be final.

I. If a timely petition for hearing is made, the environmental improvement board or the local board shall hold a hearing within sixty days after receipt of the petition. The environmental improvement board or the local board shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the hearing. If the subject of the petition is a permitting action deemed by the environmental improvement board or the local board to substantially affect the public interest, the environmental improvement board or the local board shall ensure that the public receives notice of the date, time and place of the hearing. The public in such circumstances shall also be given a reasonable opportunity

to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

J. The environmental improvement board or the local board may designate a hearing officer to take evidence in the hearing. All hearings shall be recorded.

K. The burden of proof shall be upon the petitioner. Based upon the evidence presented at the hearing, the environmental improvement board or the local board shall sustain, modify or reverse the action of the department or the local agency respectively.

L. Notwithstanding any other provision of law and subject to the provisions of Section 74-2-4 NMSA 1978, a final decision on a permit by the department, the environmental improvement board, the local agency, the local board or the court of appeals that a source will or will not meet applicable local, state and federal air pollution standards and regulations shall be conclusive and is binding on every other state agency and as an issue before any other state agency shall be deemed resolved in accordance with that final decision.

M. Subject to the provisions of Section 74-2-4 NMSA 1978, if the local board has adopted a permit regulation pursuant to this section, persons constructing or modifying any source within the boundaries of the local authority shall obtain a permit from the local agency and not from the department.

N. Fees collected pursuant to this section shall be deposited in:

(1) the state air quality permit fund created by Section 74-2-15 NMSA 1978 if collected by the department; or

(2) a fund created pursuant to Section 74-2-6 NMSA 1978 if collected by a local agency pursuant to a permit regulation adopted by the local board pursuant to this section.

O. The department may not deny an application for a construction permit for a cotton gin if the applicant proposes use of the best system of emissions reduction currently in use by cotton gins in the United States, as specified by regulation of the environmental improvement board, and the cotton gin has a potential emission rate, considering the use of the proposed emissions reduction system and the proposed hours of operation, of not more than fifty tons per year of any regulated air contaminant for which there is a national ambient air quality standard. The construction permit shall require that the applicant use the proposed emission reduction system and limit the hours of operation to the hours specified in the application. For purposes of this subsection, "best system of emissions reduction" for cotton gins means a system that will result in emissions reduction equal to or greater than that obtained by the use of

condenser screens, seventy-mesh screen or equivalent on low-pressure exhausts and high-efficiency cyclone dust collectors on high-pressure exhausts."

HOUSE BILL 192, AS AMENDED

CHAPTER 9

CHAPTER 9, LAWS 2003

AN ACT

RELATING TO INTERGOVERNMENTAL RELATIONS; ENACTING THE NEW MEXICO-CHIHUAHUA COMMISSION ACT; PROVIDING FOR COOPERATIVE ACTIVITIES BETWEEN NEW MEXICO AND THE MEXICAN STATE OF CHIHUAHUA; REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--This act may be cited as the "New Mexico-Chihuahua Commission Act".

Section 2. PURPOSES.--The purposes of the New Mexico-Chihuahua Commission Act are to establish a framework in which New Mexico and the state of Chihuahua, Mexico, can work to develop mutually beneficial programs to resolve challenges along the international border common to both states, to maximize the possibilities for economic development and to open and institutionalize lines of communication between the public and private sector leaders of the states.

Section 3. DEFINITIONS.--As used in the New Mexico-Chihuahua Commission Act:

- A. "Chihuahua" means the state of Chihuahua, Mexico; and
- B. "commission" means the New Mexico-Chihuahua commission.

Section 4. NEW MEXICO-CHIHUAHUA COMMISSION

CREATED--MEMBERS--ADMINISTRATION.--

A. The "New Mexico-Chihuahua commission" is created and is administratively attached to the economic development department.

B. The members of the commission representing New Mexico shall be:

(1) the governor of New Mexico;

(2) the secretary of economic development;

(3) the secretary of tourism;

(4) other state officials as assigned by the governor; and

(5) no more than ten members of the public appointed by the governor of New Mexico.

C. The members of the commission representing Chihuahua shall be appointed or assigned according to the customary procedure of the executive branch of the government of that state.

D. The economic development department shall provide administrative assistance to the commission as needed.

E. The economic development department shall keep records of commission proceedings.

F. The co-chairs of the commission shall be the governors of New Mexico and Chihuahua.

G. Meetings of the commission shall be at the call of the co-chairs or pursuant to the request of a majority of the members of the commission.

H. Terms for public members of the commission appointed by the governor of New Mexico shall be for two years with reappointment to additional terms at the discretion of the governor.

I. A vacancy in a term of a commission member representing New Mexico shall be filled by appointment by the governor of New Mexico for the remainder of the term of the position vacated.

J. The public members of the commission appointed by the governor of New Mexico shall receive per diem and mileage pursuant to the Per Diem and Mileage Act for performance of official duties required by the commission and shall receive no other compensation, perquisite or allowance.

Section 5. POWERS AND DUTIES.--

A. The commission shall provide a forum for discussion and resolution of issues of mutual concern to the governments of New Mexico and Chihuahua.

B. The commission may:

(1) identify projects that can be cooperatively pursued by New Mexico and Chihuahua;

(2) create avenues of communication between New Mexico and Chihuahua concerning cultural, artistic, economic and industrial affairs;

(3) confer with New Mexican and Chihuahuan cultural, artistic, economic and industrial leaders to determine the best methods and procedures to carry out the provisions of the New Mexico-Chihuahua Commission Act;

(4) promote legislation to further the goals of the commission; and

(5) communicate with state or province international commissions in other states or nations in order to obtain information about successful international intergovernmental cooperative activities or models.

C. The governor of New Mexico may negotiate with appropriate officials from Chihuahua to create cooperative projects to be implemented by Chihuahua and New Mexico or to resolve issues of mutual concern to New Mexico and Chihuahua. The governor may implement the agreements reached through those negotiations or projects developed, provided that an agreement that has a fiscal impact on New Mexico and requires an appropriation shall require an act of the legislature.

Section 6. CONFLICT OF INTEREST.--A member of the commission who performs a function or duty pursuant to the New Mexico-Chihuahua Commission Act shall not have a direct or indirect financial interest in an activity undertaken by the commission.

Section 7. TEMPORARY PROVISION.--On July 1, 2003, all records, contracts, assets and projects of the New Mexico border commission shall be transferred to the economic development department. All records, contracts, assets and projects of New Mexico state university to coordinate programs with Mexico shall remain with New Mexico state university.

Section 8. REPEAL.--Sections 12-13-1 through 12-13-7 NMSA 1978 (being Laws 1981, Chapter 28, Sections 1 through 7, as amended) are repealed.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 213, AS AMENDED

CHAPTER 10

CHAPTER 10, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; UPDATING THE DEFINITION OF "COMMERCIAL MOTOR CARRIER VEHICLE" AND "COMMERCIAL MOTOR VEHICLE" IN CERTAIN SECTIONS OF THE MOTOR TRANSPORTATION ACT AND THE MOTOR VEHICLE CODE IN ORDER TO COMPLY WITH FEDERAL REGULATIONS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1. Section 65-1-2 NMSA 1978 (being Laws 1978, Chapter 19, Section 1, as amended) is amended to read:

"65-1-2. DEFINITIONS.--As used in the Motor Transportation Act:

A. "combination" means any connected assemblage of a motor vehicle and one or more semitrailers, trailers or semitrailers converted to trailers by means of a converter gear;

B. "combination gross vehicle weight" means the sum total of the gross vehicle weights of all units of a combination;

C. "commercial motor carrier vehicle" means a self-propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when the vehicle:

(1) is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of four thousand five hundred thirty-six kilograms, or ten thousand one pounds or more; or is operated only in intrastate commerce and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of twenty-six thousand one or more pounds;

(2) is designed or used to transport more than eight passengers, including the driver, and is used to transport passengers for compensation;

(3) is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(4) is used to transport hazardous materials of the type or quantity requiring placarding under rules prescribed by applicable federal or state law;

D. "converter gear" means any assemblage of one or more axles with a fifth wheel mounted thereon designed for use in a combination to support the front end of a semitrailer, but not permanently attached thereto. A "converter gear" shall not be considered a vehicle as that term is used in Chapter 66 NMSA 1978, but weight attributable thereto shall be included in declared gross weight;

E. "declared gross weight" means maximum gross vehicle weight or combination gross vehicle weight at which a vehicle or combination will be operated during the registration period as declared by the registrant for registration and fee purposes. The vehicle or combination shall have only one "declared gross weight" for all operating considerations;

F. "department", without modification, means the department of public safety, the secretary of public safety or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

G. "director" means the secretary;

H. "division" means the motor transportation division of the department;

I. "evidence of registration" means documentation issued by the taxation and revenue department identifying a motor carrier vehicle as being registered with New Mexico or documentation issued by another state pursuant to the terms of a multistate agreement on registration of vehicles to which this state is a party identifying a motor carrier vehicle as being registered with that state; provided that evidence of payment of the weight distance tax and permits obtained under either the Special Fuels Supplier Tax Act or Trip Tax Act are not "evidence of registration";

J. "field enforcement" or "in the field" means patrolling of the highway, stopping of commercial motor carrier vehicles or establishing ports of entry and roadblocks for the purpose of checking motor carriers and includes similar activities;

K. "freight trailer" means any trailer, semitrailer or pole trailer drawn by a truck tractor or road tractor and any trailer, semitrailer or pole trailer drawn by a truck that has a gross vehicle weight of more than twenty-six thousand pounds, but the term does not include house trailers, trailers of less than one-ton carrying capacity used to

transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight;

L. "gross vehicle weight" means the weight of a vehicle without load plus the weight of any load thereon;

M. "motor carrier" means any person that owns, controls, operates or manages any motor vehicle with gross vehicle weight of twelve thousand pounds or more that is used to transport persons or property on the public highways of this state;

N. "motor vehicle" means any vehicle or device that is propelled by an internal combustion engine or electric motor power that is used or may be used on the public highways for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

O. "one-way rental fleet" means two or more vehicles each having a gross vehicle weight of under twenty-six thousand one pounds and rented to the public without a driver;

P. "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 an agency, department or instrumentality thereof; "person" also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

Q. "properly registered" means bearing the lawfully issued and currently valid evidence of registration of this or another jurisdiction, regardless of the owner's residence, except in those cases where the evidence has been procured by misrepresentation or fraud;

R. "public highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

S. "secretary" means the secretary of public safety and, except for the purposes of 65-1-33 NMSA 1978, also includes the deputy secretary and any division director delegated by the secretary;

T. "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; and

U. "utility trailer" means any trailer, semitrailer or pole trailer and includes house trailers that exceed neither eight feet in width nor forty feet in length, but does not include freight trailers, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight."

Section 2. Section 65-3-3 NMSA 1978 (being Laws 1989, Chapter 201, Section 4, as amended) is amended to read:

"65-3-3. APPLICABILITY.--

A. Notwithstanding any provision of the Motor Vehicle Code to the contrary, the provisions of the Motor Carrier Safety Act and the regulations promulgated under that act shall apply to a commercial motor carrier vehicle operating on the public highways of New Mexico of a type that:

(1) is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of four thousand five hundred thirty-six kilograms, or ten thousand one pounds or more; or is operated only in intrastate commerce and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of twenty-six thousand one or more pounds;

(2) is designed or used to transport more than eight passengers, including the driver, and is used to transport passengers for compensation;

(3) is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(4) is used to transport hazardous materials of the type or quantity requiring placarding under rules prescribed by applicable federal or state law.

B. Whenever a commercial motor carrier vehicle of one type is used to perform the functions normally performed by a motor vehicle of another type, the requirements of the Motor Carrier Safety Act shall apply to that motor vehicle and to its operation as if that motor vehicle were actually a motor vehicle of the latter type.

C. Whenever a duty is prescribed for a driver or a prohibition is imposed upon the driver pursuant to the provisions of the Motor Carrier Safety Act, it shall be the duty of the motor carrier to require observance of such prescription or prohibition. If the motor carrier is also the driver, the motor carrier shall likewise be bound."

Section 3. Section 66-1-4.3 NMSA 1978 (being Laws 1990, Chapter 120, Section 4, as amended) is amended to read:

"66-1-4.3. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "camping body" means a vehicle body primarily designed or converted for use as temporary living quarters for recreational, camping or travel activities;

B. "camping trailer" means a camping body, mounted on a chassis, or frame with wheels, designed to be drawn by another vehicle and that has collapsible partial side walls that fold for towing and unfold at the campsite;

C. "cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to the license, but cancellation of a license is without prejudice, and application for a new license may be made at any time after cancellation;

D. "casual sale" means the sale of a motor vehicle by the registered owner of the vehicle if the owner has not sold more than four vehicles in that calendar year;

E. "chassis" means the complete motor vehicle, including standard factory equipment, exclusive of the body and cab;

F. "collector" means a person who is the owner of one or more vehicles of historic or special interest who collects, purchases, acquires, trades or disposes of these vehicles or parts thereof for the person's own use in order to preserve, restore and maintain a similar vehicle for hobby purposes;

G. "combination" means any connected assemblage of a motor vehicle and one or more semitrailers, trailers or semitrailers converted to trailers by means of a converter gear;

H. "combination gross vehicle weight" means the sum total of the gross vehicle weights of all units of a combination;

I. "commerce" means the transportation of persons, property or merchandise for hire, compensation, profit or in the furtherance of a commercial enterprise in this state or between New Mexico and a place outside New Mexico, including a place outside the United States;

J. "commercial motor vehicle" means a self-propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when the vehicle:

(1) is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of four thousand five hundred thirty-six kilograms, or ten thousand one pounds or more; or is operated only in intrastate commerce and has a gross vehicle weight rating or gross

combination weight rating, or gross vehicle weight or gross combination weight, of twenty-six thousand one or more pounds;

(2) is designed or used to transport more than eight passengers, including the driver, and is used to transport passengers for compensation;

(3) is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(4) is used to transport hazardous materials of the type or quantity requiring placarding under rules prescribed by applicable federal or state law;

K. "controlled-access highway" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street or roadway except at those points only and in the manner as may be determined by the public authority having jurisdiction over the highway, street or roadway;

L. "controlled substance" means any substance defined in Section 30-31-2 NMSA 1978 as a controlled substance;

M. "converter gear" means any assemblage of one or more axles with a fifth wheel mounted thereon, designed for use in a combination to support the front end of a semitrailer but not permanently attached thereto. A converter gear shall not be considered a vehicle, as that term is defined in Section 66-1-4.19 NMSA 1978, but weight attributable thereto shall be included in declared gross weight;

N. "conviction" means the alleged violator has entered a plea of guilty or nolo contendere or has been found guilty in the trial court and has waived or exhausted all rights to an appeal;

O. "crosswalk" means:

(1) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and

(2) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface; and

P. "curb cut" means a short ramp through a curb or built up to the curb."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

CHAPTER 11

CHAPTER 11, LAWS 2003

AN ACT

ADJUSTING THE BOUNDARIES OF TAOS COUNTY PRECINCTS 20, 21 and 26.

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

Section 1. PRECINCT BOUNDARIES.--For the purposes of this section, "block identification numbers" refer to the areas identified as census blocks in the federal 2000 census TIGER/Line files for New Mexico.

A. Taos county precinct twenty shall consist of an area identified by the following block identification numbers:

350559523001839, 350559526002027, 350559526002028, 350559526002029, 350559526002064, 350559526002073, 350559526002074, 350559526002075, 350559526002076, 350559526002077, 350559526002078, 350559526002079, 350559526002082, 350559526002083, 350559526002084, 350559526002085, 350559526002086, 350559526002087, 350559526002088, 350559526002089, 350559526002090, 350559527001097, 350559527001098, 350559527001099, 350559527001100, 350559527001101, 350559527001102, 350559527001103, 350559527001104, 350559527001105, 350559527001107, 350559527001108, 350559527001109, 350559527001110, 350559527001111, 350559527001170, 350559527001171, 350559527003005, 350559527003006, 350559527003007, 350559527003008, 350559527003010, 350559527003025, 350559527003026, 350559527003034, 350559527003035, 350559527003037, 350559527003038, 350559527003040, 350559527003041, 350559527003043, 350559527003044, 350559527003045, 350559527003046, 350559527003047, 350559527003048, 350559527003049, 350559527003050, 350559527003051, 350559527003052, 350559527003053, 350559527003054, 350559527003055, 350559527003056, 350559527003057, 350559527003058 and 350559527003059.

B. Taos county precinct twenty-one shall consist of an area identified by the following block identification numbers:

350559527002014, 350559527002015, 350559527002016, 350559527002017, 350559527002018, 350559527002019, 350559527002030, 350559527002072,

350559527002073, 350559527002077, 350559527002078, 350559527002079, 350559527002080, 350559527002081, 350559527002083, 350559527002084, 350559527002085, 350559527002086, 350559527002087, 350559527002088, 350559527002089, 350559527002090, 350559527002091, 350559527002092, 350559527002093, 350559527002094, 350559527002095, 350559527002096, 350559527002097, 350559527002098, 350559527002128, 350559527002141, 350559527002142, 350559527002143, 350559527002144, 350559527002145, 350559527002146, 350559527002147, 350559527002154, 350559527003017, 350559527003018, 350559527003019, 350559527003020, 350559527003021, 350559527003022, 350559527003023, 350559527003024, 350559527003027, 350559527003028, 350559527003029, 350559527003030, 350559527003031, 350559527003032, 350559527003033, 350559527003036, 350559527003039, 350559527003042, 350559527003060, 350559527003061, 350559527003062, 350559527003063 and 350559527003064.

C. Taos county precinct twenty-six shall consist of an area identified by the following block identification numbers:

350559527001000, 350559527001001, 350559527001002, 350559527001003, 350559527001004, 350559527001005, 350559527001006, 350559527001007, 350559527001008, 350559527001009, 350559527001010, 350559527001011, 350559527001012, 350559527001013, 350559527001014, 350559527001015, 350559527001016, 350559527001017, 350559527001018, 350559527001019, 350559527001021, 350559527001025, 350559527001026, 350559527001027, 350559527001028, 350559527001029, 350559527001030, 350559527001031, 350559527001032, 350559527001172, 350559527001173, 350559527001182, 350559527001183, 350559527001184, 350559527001187, 350559527001188, 350559527001189, 350559527001190, 350559527001191, 350559527001192, 350559527001193, 350559527001194, 350559527001195, 350559527001196, 350559527001197, 350559527001198, 350559527001199, 350559527001200, 350559527001201, 350559527001202, 350559527001203, 350559527001204, 350559527001205, 350559527001206, 350559527001207, 350559527001208, 350559527002129, 350559527002130, 350559527002131, 350559527002132, 350559527002133, 350559527002134, 350559527002135, 350559527002136, 350559527002137, 350559527002138, 350559527002139, 350559527002140, 350559527002148, 350559527002149, 350559527002150, 350559527002151, 350559527002152, 350559527002153, 350559527002155, 350559527002156, 350559527002157, 350559527002158, 350559527002159, 350559527002160, 350559527002161, 350559529002016, 350559529002018, 350559529002020 and 350559529002047.

CHAPTER 12, LAWS 2003

AN ACT

RELATING TO NATURAL RESOURCES; PROVIDING FOR REGULATION AND CONSERVATION OF HELIUM AND OTHER NON-HYDROCARBON GASES.

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

Section 1. Section 70-2-34 NMSA 1978 (being Laws 1935, Chapter 72, Section 28, as amended) is amended to read:

"70-2-34. REGULATION, CONSERVATION AND PREVENTION OF WASTE OF CARBON DIOXIDE, HELIUM AND OTHER NON-HYDROCARBON GASES.--

A. The oil conservation division shall adopt and administer rules on the conservation, the production and the prevention of waste of carbon dioxide, helium and other non-hydrocarbon gases in the same manner as it regulates, conserves and prevents waste of natural or hydrocarbon gas. Where applicable, the provisions of the Oil and Gas Act relating to gas or natural gas shall also apply to carbon dioxide, helium and other non-hydrocarbon gases.

B. The commission shall have concurrent jurisdiction and authority with the oil conservation division to the extent necessary for the commission to perform its duties as required by law.

C. As used in this section:

(1) "carbon dioxide" means a noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks;

(2) "helium" means a gas composed of the elemental gas helium and found in underground rocks, often along with other gases; and

(3) "other non-hydrocarbon gases" means noncombustible gases found in underground rocks, often along with other gases."

HOUSE BILL 147

CHAPTER 13

CHAPTER 13, LAWS 2003

AN ACT

RELATING TO TAXATION; AMENDING THE DEFINITION OF RESIDENT FOR PURPOSES OF THE INCOME TAX ACT.

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

Section 1. Section 7-2-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 26, as amended) is amended to read:

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

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by

Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year; and

(3) includes, for all taxpayers, any other income of the taxpayer not included in adjusted gross income but upon which a federal tax is calculated pursuant to the Internal Revenue Code for income tax purposes, except amounts for which a calculation of tax is made pursuant to Section 55 of the Internal Revenue Code, as that section may be amended or renumbered; "base income" also includes interest received on a state or local bond;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

D. "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;

E. "fiduciary" means a guardian, trustee, executor, administrator, committee, conservator, receiver, individual or corporation acting in any fiduciary capacity;

F. "filing status" means "married filing joint returns", "married filing separate returns", "head of household", "surviving spouse" and "single", as those terms are generally defined for federal tax purposes;

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

H. "head of household" means "head of household" as generally defined for federal income tax purposes;

I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;

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

K. "lump-sum amount" means an amount that, for the purpose of determining liability for federal income tax, was not included in adjusted gross income but upon which the five-year-averaging or the ten-year-averaging method of tax computation provided in Section 402 of the Internal Revenue Code, as that section may be amended or renumbered, was applied;

L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source derived, including:

- (1) compensation;
- (2) net profit derived from business;
- (3) gains derived from dealings in property;
- (4) interest;
- (5) net rents;
- (6) royalties;
- (7) dividends;
- (8) alimony and separate maintenance payments;

- (9) annuities;
- (10) income from life insurance and endowment contracts;
- (11) pensions;
- (12) discharge of indebtedness;
- (13) distributive share of partnership income;
- (14) income in respect of a decedent;
- (15) income from an interest in an estate or trust;
- (16) social security benefits;
- (17) unemployment compensation benefits;
- (18) workers' compensation benefits;
- (19) public assistance and welfare benefits;
- (20) cost-of-living allowances; and
- (21) gifts;

M. "modified gross income" does not include:

- (1) payments for hospital, dental, medical or drug expenses whether made to or on behalf of the taxpayer;
- (2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of compensation;
- (3) payments made pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular use or invoice by the payer; or
- (4) payments made pursuant to

Sections 7-2-14, 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

N. "net income" means, for estates and trusts, base income adjusted to exclude amounts that the state is prohibited from taxing because of the laws or

constitution of this state or the United States and means, for taxpayers other than estates or trusts, base income adjusted to exclude:

(1) an amount equal to the standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered;

(2) an amount equal to the itemized deductions, as defined in Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, allowed the taxpayer for the taxpayer's taxable year less the amount excluded pursuant to Paragraph (1) of this subsection;

(3) an amount equal to the product of the exemption amount allowed for the taxpayer's taxable year by Section 151 of the Internal Revenue Code, as that section may be amended or renumbered, multiplied by the number of personal exemptions allowed for federal income tax purposes; (4) income from obligations of the United States of America less expenses incurred to earn that income;

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

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

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

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

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

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

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

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in

turn until the net operating loss carryover is exhausted; in no event shall a net operating loss carryover be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

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

P. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (6) or (7) of Subsection N of this section, may be excluded from base income;

Q. "nonresident" means every individual not a resident of this state;

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

S. "resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year, who, on or before the last day of the taxable year, changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act for periods after that change of abode;

T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

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

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

W. "surviving spouse" means "surviving spouse" as generally defined for federal income tax purposes;

X. "taxable income" means net income less any lump-sum amount;

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

Z. "taxpayer" means any individual subject to the tax imposed by the Income Tax Act."

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2003.

HOUSE BILL 920, AS AMENDED

CHAPTER 14

CHAPTER 14, LAWS 2003

AN ACT

RELATING TO ELECTIONS; ENACTING THE VOTER ACTION ACT; PROVIDING FOR VOLUNTARY PUBLIC CAMPAIGN FINANCING OF ELECTIONS FOR COMMISSIONERS OF THE PUBLIC REGULATION COMMISSION; PRESCRIBING PENALTIES; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Election Code is enacted to read:

"SHORT TITLE.--Sections 1 through 17 of this act may be cited as the "Voter Action Act"."

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

"DEFINITIONS.--As used in the Voter Action Act:

A. "applicant candidate" means a candidate who is running for a covered office and who is seeking to be a certified candidate in a primary or general election;

B. "certified candidate" means a candidate running for a covered office who chooses to obtain financing pursuant to the Voter Action Act and is certified as a Voter Action Act candidate;

C. "contested election" means an election in which there are more candidates for a position than the number to be elected to that position;

D. "covered office" means the office of public regulation commissioner;

E. "election cycle" means the primary and general elections for the same term of the same covered office, beginning on the day after the last general election for the office and ending with the general election; the primary election cycle begins on the first day of the election cycle and ends on the day of the primary election; the general election begins on the day after the primary election and ends on the day of the general election;

F. "fund" means the public election fund;

G. "noncertified candidate" means either a candidate running for a covered office who does not choose to participate in the Voter Action Act and who is not seeking to be a certified candidate or a candidate who declares his intent to participate but who fails to qualify;

H. "qualifying contribution" means a donation of five dollars (\$5.00) in the form of cash or a check or money order payable to the fund in support of an applicant candidate that is:

(1) made by a registered voter who is eligible to vote for the covered office that the applicant candidate is seeking;

(2) made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the applicant candidate; and

(3) acknowledged by a receipt that identifies the contributor's name and residential address on forms provided by the bureau of elections and that is signed by the contributor, one copy of which is attached to the list of contributors and sent to the bureau of elections;

I. "qualifying period" means:

(1) for major party applicant candidates for public regulation commissioner, the period beginning October 1 immediately preceding the election year and ending at 5:00 p.m. on the third Tuesday of March of the election year; and

(2) for independent and minor party candidates, the period beginning February 1 of the election year and ending that year at 5:00 p.m. on the filing date for independent or minor party candidates for the office for which the candidate is running;

J. "secretary" means the secretary of state or the office of the secretary of state;

K. "seed money" means a contribution raised for the primary purpose of enabling applicant candidates to collect qualifying contributions and petition signatures; and

L. "total vote" means the total number of votes cast in the last general election for all candidates for governor in the district in which the candidate is running."

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

"TERMS OF PARTICIPATION--DECLARATION OF INTENT.--

A. A candidate choosing to obtain financing pursuant to the Voter Action Act shall first file with the secretary a declaration of intent to participate in that act as an applicant candidate for a stated covered office. The declaration of intent shall be filed with the secretary prior to or during the qualifying period according to forms and procedures developed by the secretary.

B. An applicant candidate choosing to participate in the Voter Action Act shall submit a declaration of intent prior to collecting any qualifying contributions and make explicit in the declaration that the candidate has complied with and will continue to comply with that act's contribution and expenditure limits and all other requirements set forth in that act and rules issued by the secretary.

C. A candidate shall not be eligible to become an applicant candidate if the candidate has accepted contributions totaling five hundred dollars (\$500) or more or made expenditures totaling five hundred dollars (\$500) or more between the beginning of the qualifying period and filing a declaration of intent."

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

"QUALIFYING CONTRIBUTIONS.--Applicant candidates shall obtain qualifying contributions as follows:

A. the applicant candidate shall obtain qualifying contributions from that number of registered voters that is equal to at least one quarter percent of the total vote;

B. applicant candidates may accept qualifying contributions from persons who become registered within the statutory time frame that would enable that person to vote in the primary election;

C. voters registered as independent are not excluded from making qualifying contributions but shall be registered within the statutory time frame as independent; and

D. no payment, gift or anything of value shall be given in exchange for a qualifying contribution."

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

"SEED MONEY.--

A. An applicant candidate may collect seed money from individual donors and political action committees in amounts of no more than one hundred dollars (\$100) per donor or committee. An applicant candidate may contribute an amount of seed money from his own funds up to the limits specified in Subsection H of this section.

B. An applicant candidate may collect and spend seed money during the sixty days immediately preceding the qualifying period and throughout the qualifying period.

C. An applicant candidate may not collect seed money from a corporation, association or partnership formed under state law or from labor organizations.

D. An applicant candidate may not collect or spend seed money for any purpose after certification and before the end of the election cycle for which the candidate was certified, but after the election cycle may carry forward to the next election cycle any unspent seed money to be used as seed money.

E. If a certified candidate is defeated or is elected and decides not to run again as an applicant candidate, any unspent seed money shall be forfeited to the fund.

F. After becoming an applicant candidate and prior to certification, an applicant candidate shall not accept contributions, except for seed money or qualifying contributions.

G. An incumbent elected prior to 2006 who was not an applicant candidate when elected but declares his intent to become an applicant candidate in accordance with the Voter Action Act may transfer from his campaign fund for use as seed money up to the limits for contributions and expenditures specified in Subsection H of this section.

H. An applicant candidate shall limit seed money contributions and expenditures to five thousand dollars (\$5,000)."

Section 6. A new section of the Election Code is enacted to read:

"CERTIFICATION.--

A. Upon receipt of a final submittal of qualifying contributions by an applicant candidate, the secretary shall determine whether the applicant candidate has:

- (1) signed and filed a declaration of intent to obtain financing pursuant to the Voter Action Act in accordance with the requirements of that act;
- (2) submitted the appropriate number of qualifying contributions;
- (3) qualified as a candidate pursuant to other applicable state election law;
- (4) complied with seed money contribution and expenditure restrictions; and
- (5) otherwise met the requirements for obtaining financing pursuant to the Voter Action Act.

B. The secretary shall certify applicant candidates complying with the requirements of this section as certified candidates as soon as possible and no later than ten days after final submittal of qualifying contributions and certification as a candidate pursuant to other applicable state election law.

C. A certified candidate shall comply with all requirements of the Voter Action Act after certification and throughout the primary election and general election cycles. A certified candidate who accepts public campaign finance funds for the primary election shall comply with all the requirements of the Voter Action Act for the remainder of the election cycle in question, even if he decides not to accept such funds for the general election."

Section 7. A new section of the Election Code is enacted to read:

"GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS TO AND EXPENDITURES OF CERTIFIED CANDIDATES.--

A. All money distributed to a certified candidate shall be used for that candidate's campaign-related purposes in the election cycle in which the money was distributed.

B. A certified candidate shall return to the fund any amount that is unspent or unencumbered at the time that person ceases to be a candidate before a primary or general election for which the fund money was distributed.

C. A certified candidate shall limit total campaign expenditures and debts to the amount of money distributed to that candidate from the fund. A certified candidate shall not accept contributions or loans from any other source except his political party, as specified in Section 8 of the Voter Action Act.

D. A certified candidate shall return to the secretary, within two weeks after the primary election, any amount that is unspent or unencumbered by the date of the primary election for direct deposit into the fund.

E. A certified candidate shall return to the secretary, within two weeks after the general election, any amount that is unspent or unencumbered by the date of the general election for direct deposit into the fund."

Section 8. A new section of the Election Code is enacted to read:

"POLITICAL PARTY EXPENDITURES--CONTRIBUTIONS TO CERTIFIED CANDIDATES.--

A. A certified candidate may accept monetary or in-kind contributions from a political party; provided that the aggregate amount of such contributions from all political party committees combined does not exceed the equivalent of ten percent of the value of that candidate's aggregate public financing per election cycle.

B. All in-kind contributions from a political party distributed to certified candidates shall be used for campaign-related purposes.

C. Nothing in this section shall prevent political party funds from being used for general operating expenses of the party; conventions; nominating and endorsing candidates; identifying, researching and developing the party's position on issues; party platform activities; noncandidate-specific voter registration; noncandidate-specific get-out-the-vote drives; travel expenses for noncandidate party leaders and staff; and other noncandidate-specific party building activities."

Section 9. A new section of the Election Code is enacted to read:

"CANDIDATE REPORTING REQUIREMENTS.--

A. The secretary shall publish guidelines outlining permissible campaign-related expenditures.

B. Applicant candidates shall file a report listing seed money contributions and expenditures with their application for certification.

C. Applicant candidates shall file qualifying contributions with the secretary during the qualifying period according to procedures developed by the secretary. In developing these procedures, the secretary shall use existing campaign reporting procedures and deadlines whenever practical.

D. Certified candidates shall report expenditures according to the campaign reporting requirements specified in the Election Code.

E. In addition to the campaign contribution and expenditure reports specified in the Election Code, all noncertified candidates who have as an opponent a certified candidate shall report to the secretary ten days before the primary and general elections the amount of money spent by that noncertified candidate. This report shall include all previously unreported transactions through 5:00 p.m. two days before the report is due.

F. A person or political committee that makes expenditures to influence a race involving a certified candidate shall report to the secretary the amount that person or political committee has spent. These reports shall include all previously unreported transactions through 5:00 p.m. two days before the report is due, and shall be submitted as follows:

(1) for the primary election, by 5:00 p.m. on the second Monday in May, by 5:00 p.m. on the eleventh day before the election and by 5:00 p.m. on the Thursday before the election; and

(2) for the general election, by 5:00 p.m. the first Tuesday in October, by 5:00 p.m. on the eleventh day before the election and by 5:00 p.m. on the Thursday before the election."

Section 10. A new section of the Election Code is enacted to read:

"PUBLIC ELECTION FUND--CREATION--USE.--

A. There is created in the state treasury the "public election fund" solely for the purposes of:

(1) financing the election campaigns of certified candidates for covered offices;

(2) paying administrative and enforcement costs of the Voter Action Act; and

(3) carrying out all other specified provisions of the Voter Action Act.

B. The state treasurer shall invest the funds as other state funds are invested, and all income derived from the fund shall be credited directly to the fund. Remaining balances at the end of a fiscal year shall remain in the election fund and not revert to the general fund.

C. Money received from the following sources shall be deposited directly into the fund:

(1) qualifying contributions that have been submitted to the secretary;

(2) any recurring balance of unspent fund money distributed to a certified candidate who does not remain a candidate through the primary or general election period for which the money was distributed;

(3) money that remains unspent or unencumbered by a certified candidate following the date of the primary election;

(4) money that remains unspent or unencumbered by a certified candidate following the date of the general election;

(5) unspent seed money that cannot be used for any other purpose; and

(6) money appropriated by the legislature.

D. The fund shall be funded at three hundred thousand dollars (\$300,000) per year segregated from proceeds collected as follows:

(1) one hundred thousand dollars (\$100,000) from inspection and supervision fees collected pursuant to Section 62-8-8 NMSA 1978;

(2) one hundred thousand dollars (\$100,000) from utility and carrier inspection fees collected pursuant to Section 63-7-20 NMSA 1978; and

(3) one hundred thousand dollars (\$100,000) from the insurance premium tax collected pursuant to Section 59A-6-2 NMSA 1978."

Section 11. A new section of the Election Code is enacted to read:

"DETERMINATION OF FUND AMOUNT.--

A. By January 1, 2007, and every two years thereafter, the secretary shall prepare and provide to the legislature a report documenting, evaluating and making recommendations relating to the administration, implementation and enforcement of the Voter Action Act.

B. In the report, the secretary shall set out the revenues received to date, the expected costs to the fund for the next election cycle and the amount of the annual appropriation from the legislature that will be required to meet this need."

Section 12. A new section of the Election Code is enacted to read:

"TIMING OF FUND DISTRIBUTION.--

A. Beginning with the election cycle that ends with the general election in 2006, the secretary shall distribute money from the fund to certified candidates.

B. For a primary election certified candidate, the secretary shall distribute the amount due to that certified candidate for that covered office within one week of certification.

C. For a candidate certified for the general election, the secretary shall distribute the amount due to that certified candidate for that covered office within one week after the primary election or, for a minor party or independent candidate, within one week after certification of the candidate."

Section 13. A new section of the Election Code is enacted to read:

"AMOUNT OF FUND DISTRIBUTION.--

A. By April 1, 2005, the secretary shall determine the amount of money to be distributed to each certified candidate for the election cycle ending with the general election in 2006, based on the type of election and the provisions of Subsections B through E of this section.

B. For contested primary elections, the amount of money to be distributed is equal to the average amount of campaign expenditures made by all candidates receiving ten percent or greater of votes cast in all contested primary election races for the immediately preceding four primary elections for public regulation commissioner.

C. For uncontested primary elections, the amount of money to be distributed is equal to fifty percent of the average amount of campaign expenditures made by all candidates during all uncontested primary election races, or for contested races if the amount is lower, for the immediately preceding four primary elections for public regulation commissioner.

D. For contested general elections, the amount of money to be distributed is equal to the average amount of campaign expenditures made by all candidates receiving thirty percent or greater of votes cast in all contested general election races for the immediately preceding four general elections for public regulation commissioner.

E. For uncontested general elections, the amount of money to be distributed is equal to fifty percent of the average amount of campaign expenditures made by all candidates receiving thirty percent or greater of votes cast in all uncontested general election races for the immediately preceding four general elections for public regulation commissioner. If a general election race that is initially uncontested later becomes contested because of the qualification of an independent or minor party candidate to appear on the ballot for that race, an additional amount of money will be distributed to the certified candidate to make that candidate's total distribution amount equal to the amount distributed pursuant to Subsection D of this section.

F. Once the certification for candidates for the primary election has been completed, the secretary shall calculate the total amount of money to be distributed in the primary election cycle, based on the number of certified candidates and the allocations specified in this section. The secretary shall increase the total amount by twenty percent to provide funds for additional matching funds in the primary election. The secretary shall also prepare an estimate of the total amount of money that might be distributed in the general election cycle. This estimate shall be increased by twenty percent to provide funds for additional matching funds in the general election. If the total amount to be distributed in the primary election cycle, plus the added twenty percent and the estimated total amount to be distributed in the general election cycle, plus the added twenty percent, all taken together, exceed the amount expected to be available in the fund, the secretary shall allocate the amount available between the primary and general election cycles. This allocation shall be based on the ratio of the two total amounts.

G. If the allocation specified in Subsection F of this section is greater than the total amount available for distribution, then the amounts to be distributed to individual candidates, specified in Subsections B through E of this section, shall each be reduced by the same percentage as the reduction by which the total amount needed has been reduced relative to the total amount available.

H. If the immediately preceding four election cycles do not contain sufficient data for the secretary to determine the amount to be distributed for an office, the secretary shall use data from the most recent applicable elections for that office. If no applicable elections for that office contain sufficient data, the secretary shall set an amount based on data from elections for comparable offices.

I. At least every two years after January 1, 2007, the secretary shall evaluate and modify as necessary the dollar values originally determined by Subsections B through E or H of this section and shall consider and account for inflation in the evaluations."

Section 14. A new section of the Election Code is enacted to read:

"MATCHING FUNDS.--When a noncertified candidate has one or more opponents who are certified candidates and his campaign finance report or group of reports shows that the sum of the noncertified candidate's expenditures and obligations made, or funds raised or borrowed, whichever is greater, alone or in conjunction with expenditures made independently of the candidate to influence the election on behalf of the candidate, exceeds the amount distributed to the certified candidate, the secretary shall issue immediately to any opposing certified candidate an additional amount equivalent to the excess amount reported by the non-participating opposing candidate. Total matching funds to a certified candidate in an election are limited to twice the amount originally distributed to that candidate pursuant to Section 13 of the Voter Action Act."

Section 15. A new section of the Election Code is enacted to read:

"ADMINISTRATION--SECRETARY OF STATE--DUTIES.--

A. The secretary shall adopt rules to ensure effective administration of the Voter Action Act.

B. The rules shall include procedures for:

(1) qualifications, certification and disbursement of revenues and return of unspent fund revenues;

(2) obtaining qualifying contributions;

(3) certification of candidates;

(4) collection of revenues; and

(5) return of fund disbursements and other money to the fund."

Section 16. A new section of the Election Code is enacted to read:

"APPEALS.--The procedure for challenging a certification decision by the secretary is as follows:

A. a person aggrieved by a certification decision or a decision regarding the distribution of matching funds may appeal to the secretary within three days of the decision. The appeal shall be in writing and shall set forth the reasons for appeal;

B. within five days after an appeal is properly made, and after due notice is given to the parties in dispute, the secretary shall hold a hearing whereby:

(1) the appellant has the burden of providing evidence to demonstrate that the secretary's decision was improper; and

(2) the secretary shall rule on the appeal within three days after the completion of the hearing;

C. the parties in dispute may appeal the decision of the secretary by commencing an action in district court; and

D. certified candidates whose certification is revoked on appeal shall return to the secretary any unspent money distributed from the fund. If the secretary or court finds that an appeal was made frivolously or to result in delay or hardship, the secretary or court may sanction the moving party by requiring the party to pay costs of the administrative hearing, the court hearing and the opposing parties."

Section 17. A new section of the Election Code is enacted to read:

"PENALTIES.--

A. In addition to other penalties that may be applicable, a person who violates a provision of the Voter Action Act is subject to a civil penalty of up to ten thousand dollars (\$10,000) per violation. In addition to a fine, a certified candidate found in violation of that act may be required to return to the fund all amounts distributed to the candidate from the fund. If the secretary makes a determination that a violation of that act has occurred, the secretary shall impose a fine or transmit the finding to the attorney general for prosecution. In determining whether a certified candidate is in violation of the expenditure limits of that act, the secretary may consider as a mitigating factor any circumstances out of the candidate's control.

B. A person who willfully or knowingly violates the provisions of the Voter Action Act or rules of the secretary or knowingly makes a false statement in a report required by that act is guilty of a fourth degree felony and, if he is a certified candidate, shall return to the fund all money distributed to that candidate."

Section 18. Section 59A-6-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 102, as amended) is amended to read:

"59A-6-2. PREMIUM TAX.--

A. The premium tax provided for in this section shall apply as to the following taxpayers:

- (1) each insurer authorized to transact insurance in New Mexico;
- (2) each insurer formerly authorized to transact insurance in New Mexico and receiving premiums on policies remaining in force in New Mexico, except that this provision shall not apply as to an insurer that withdrew from New Mexico prior to March 26, 1955;
- (3) each plan operating under provisions of Chapter 59A, Articles 46 through 49 NMSA 1978;
- (4) each property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978, as to any consideration received as security or surety for a bail bond in connection with a judicial proceeding, which consideration shall be considered "gross premiums" for the purposes of this section; and
- (5) each unauthorized insurer that has assumed a contract or policy of insurance directly or indirectly from an authorized or formerly authorized insurer and is receiving premiums on such policies remaining in force in New Mexico, except that

this provision shall not apply if a ceding insurer continues to pay the tax provided in this section as to such policy or contract.

B. Each such taxpayer shall pay in accordance with this subsection three and three-thousandths percent of the gross premiums and membership and policy fees received by it on insurance or contracts covering risks within this state during the preceding calendar year, less all return premiums, including dividends paid or credited to policyholders or contract holders and premiums received for reinsurance on New Mexico risks. For each calendar quarter, an estimated payment shall be made on April 15, July 15, October 15 and the following January 15. The estimated payments shall be equal to at least one-fourth of either the payment made during the previous calendar year or eighty percent of the actual payment due for the current calendar year, whichever is greater. The final adjustment for payments due for the prior year shall be made with the return which shall be filed on April 15 of each year, at which time all taxes for that year are due. Dividends paid or credited to policyholders or contract holders and refunds, savings, savings coupons and similar returns or credits applied or credited to payment of premiums for existing, new or additional insurance shall, in the amount so used, constitute premiums subject to tax under this section for the year in which so applied or credited. Provided that as to every insurer which throughout such preceding calendar year had at least forty percent of its admitted assets invested in New Mexico investments, as the same are defined in Subsection C of this section, the rate of such tax shall be nine-tenths of one percent in lieu of three percent; provided further that, effective January 1, 1992, the rate shall be one and four-tenths percent; effective July 1, 1992, the rate shall be one and nine-tenths percent; effective January 1, 1993, the rate shall be two and four-tenths percent; and effective July 1, 1993 and thereafter, the rate shall be three and three-thousandths percent.

C. New Mexico investments for the purpose of Subsection B of this section are defined as follows:

- (1) real estate located within New Mexico;
- (2) bonds or obligations of New Mexico or of any county or other subdivision thereof;
- (3) bonds, debentures or secured obligations of any corporation that has fifty percent of its assets located within New Mexico;
- (4) first mortgages secured by real estate located within New Mexico;
- (5) deposits in state banks, national banks and trust companies having their principal place of business within New Mexico;
- (6) policy loans to residents of New Mexico; and

(7) preferred and common stock of corporations having at least fifty percent of their assets located within New Mexico.

D. Nothing contained in Subsection C of this section shall be construed to affect any provision of Chapter 59A, Article 9 NMSA 1978.

E. Exempted from the tax imposed by Subsection B of this section are premiums attributable to insurance or contracts purchased by the state or any political subdivision and payments received by a health maintenance organization from the federal secretary of health and human services pursuant to a contract issued under the provisions of 42 U.S.C. Section 1395 mm(g)."

Section 19. Section 59A-6-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 105, as amended) is amended to read:

"59A-6-5. DISTRIBUTION OF INSURANCE DEPARTMENT COLLECTIONS.--

A. All money received by the insurance department for fees, licenses, penalties and taxes shall be paid daily by the superintendent to the state treasurer and by him credited to the "insurance department suspense fund" except as provided by:

- (1) the Law Enforcement Protection Fund Act;
- (2) Section 59A-6-1.1 NMSA 1978; and
- (3) the Voter Action Act.

B. The superintendent may authorize refund of money erroneously paid as fees, licenses, penalties or taxes from the insurance department suspense fund under request for refund made within three years after the erroneous payment.

C. At the end of every month, the treasurer shall transfer to the "fire protection fund" the balance remaining in the insurance department suspense fund after applicable refunds made pursuant to Subsection B of this section, and derived from property and vehicle insurance business, and transfer to the general fund the balance remaining in the insurance department suspense fund derived from all other kinds of insurance business."

Section 20. Section 63-7-20 NMSA 1978 (being Laws 1951, Chapter 194, Section 1, as amended) is amended to read:

"63-7-20. UTILITY AND CARRIER INSPECTION--FEE.--Each utility and carrier doing business in this state which is subject to the control and jurisdiction of the commission by virtue of the provisions of Article 11 of the constitution of New Mexico with respect to its rates and service shall pay annually to the commission a fee in performance of its duties as now provided by law. The fee for carriers shall not exceed

two hundred fifty-six thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. The fee for utilities shall not exceed five hundred eleven thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. This sum shall be payable annually on or before January 20 or in equal quarterly installments on or before January 20, April 20, July 20 and October 20 in each year. No similar fee shall be imposed upon the utility or carrier. In the case of utilities or carriers engaged in interstate business, the fees shall be measured by the gross receipts of the utilities or carriers from intrastate business only for the preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. As used in this section, "utility" includes telephone companies and transmission companies."

Section 21. Section 62-8-8 NMSA 1978 (being Laws 1967, Chapter 96, Section 6, as amended) is amended to read:

"62-8-8. INSPECTION AND SUPERVISION FEE.--Each utility doing business in this state and subject to the control and jurisdiction of the commission with respect to its rates or service regulations shall pay annually to the state a fee for the inspection and supervision of such business in an amount equal to five hundred six thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. That sum shall be payable on or before the last day of February in each year. An inspection and supervision fee shall be paid by utilities in addition to all property, franchise, license, intangible and other taxes, fees and charges provided by law. No similar inspection and supervision fee shall be measured by the amount of the gross receipts of such utility for the calendar year next preceding the date fixed in this section for the payment of the fee. In the case of utilities engaged in interstate business, the inspection and supervision fee shall be measured by the gross receipts of those utilities from intrastate business only for that preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. No inspection and supervision fee shall be charged on the gross receipts from the sale of gas, water or electricity to a utility regulated by the commission for resale to the public."

Section 22. SEVERABILITY.--If any part of or application of the Voter Action Act is held invalid, the remainder of its provisions or its application to other situations or persons shall not be affected.

Section 23. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 420, AS AMENDED

CHAPTER 15

CHAPTER 15, LAWS 2003

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING FOR TRAVEL AND RELATED COSTS AS ELIGIBLE EXPENSES UNDER THE ECONOMIC DEVELOPMENT DEPARTMENT'S STATE COOPERATIVE ADVERTISING PROGRAM.

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

Section 1. Section 9-15-15 NMSA 1978 (being Laws 1983, Chapter 297, Section 15) is amended to read:

"9-15-15. DEPARTMENT COOPERATION WITH LOCAL AND REGIONAL DEVELOPMENT AGENCIES.--The department shall cooperate with local and regional development agencies, including:

- A. coordinating activities of the department and local or regional development agencies;
- B. assisting in gathering information on local and regional assets;
- C. assisting in the establishment of procedures for handling potential clients;
- D. assisting in the development of a plan for the expansion of the local or regional economic base;
- E. assisting in marketing the benefits of local communities by providing matching funds through the state cooperative advertising program, which shall include as eligible expenses travel and related costs to attract new business investment into the communities;
- F. assisting in the establishment of programs to attract new labor forces or to train local labor forces; and
- G. identifying barriers to local or regional economic development and developing plans to overcome such barriers."

HOUSE BILL 23, AS AMENDED

CHAPTER 16

CHAPTER 16, LAWS 2003

AN ACT

RELATING TO GEOTHERMAL RESOURCES; ENACTING A NEW SECTION OF THE GEOTHERMAL RESOURCES CONSERVATION ACT TO PROVIDE THAT CERTAIN USES OF POTABLE WATER ARE NOT USES OF GEOTHERMAL RESOURCES.

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

Section 1. Section 71-5-1 NMSA 1978 (being Laws 1975, Chapter 272, Section 1) is amended to read:

"71-5-1. SHORT TITLE.--Chapter 71, Article 5 NMSA 1978 may be cited as the "Geothermal Resources Conservation Act"."

Section 2. A new section of the Geothermal Resources Conservation Act is enacted to read:

"EXCLUSION--INCIDENTAL LOSS OR EXTRACTION OF HEAT.--When the application of potable water to a beneficial use involves the incidental loss or extraction of heat, and the water is 250 degrees Fahrenheit or less, then that heat is not a geothermal resource for which a royalty is due. In such a case, the use is not governed by laws related to geothermal resources but is simply governed by Chapter 72 NMSA 1978."

HOUSE BILL 949, AS AMENDED

CHAPTER 17

CHAPTER 17, LAWS 2003

AN ACT

RELATING TO THE NEW MEXICO MORTGAGE FINANCE AUTHORITY; CHANGING MEMBERSHIP.

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

Section 1. Section 58-18-4 NMSA 1978 (being Laws 1975, Chapter 303, Section 4, as amended) is amended to read:

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

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality, to be known as the "New Mexico mortgage finance authority", for the performance of essential public functions. The authority shall be composed of seven members. The lieutenant governor, state treasurer and attorney general shall be ex-officio members of the authority with voting privileges. The governor, with the advice and consent of the senate, shall appoint the other four members of the authority, who shall be residents of the state and shall not hold other public office. The four members of the authority appointed by the governor shall be appointed for terms of four years or less staggered so that the term of one member expires on January 1 of each year. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. Any member of the authority shall be eligible for reappointment. Each member of the authority appointed by the governor may be removed by the governor for misfeasance, malfeasance or willful neglect of duty after reasonable notice and a public hearing, unless the notice and hearing are, in writing, expressly waived. Each member of the authority appointed by the governor, before entering upon duty, shall take an oath of office to administer the duties of the office faithfully and impartially, and a record of the oath shall be filed in the office of the secretary of state. The governor shall designate a member of the authority to serve as chair for a term that shall be coterminous with the chair's then current term as a member of the authority. The authority shall annually elect one of its members as vice chair. The authority shall also elect or appoint and prescribe the duties of other officers, who need not be members, as the authority deems necessary or advisable, including an executive director and a secretary, who may be the same person. The authority shall fix the compensation of officers. Officers and employees of the authority are not subject to the Personnel Act. The authority may delegate to one or more of its members, officers, employees or agents the powers and duties it may deem proper.

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

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

D. Meetings of the authority shall be held at the call of the chair or whenever three members so request in writing. A majority of members in office shall

constitute a quorum for the transaction of any business and for the exercise of any power or function of the authority. A vacancy in the membership of the authority shall not impair the rights of a quorum to exercise all the rights and to perform all the duties of the authority. An ex-officio member from time to time may designate in writing another person to attend meetings of the authority and, to the same extent and with the same effect, act in the member's stead.

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

F. The authority shall be separate and apart from the state and shall not be subject to the supervision or control of a board, bureau, department or agency of the state except as specifically provided in the Mortgage Finance Authority Act. To effectuate the separation of the state from the authority, the use of the terms "state agency" or "instrumentality" in any other law of the state shall not be deemed to refer to the authority unless the authority is specifically named."

SENATE BILL 393

CHAPTER 18

CHAPTER 18, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING SCHOOL DISTRICTS TO TRACK GRADUATION RATES.

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

Section 1. A new section of the Public School Code is enacted to read:

"HIGH SCHOOL GRADUATION RATES--REPORTING IN ACCOUNTABILITY REPORT.--In addition to other requirements for the annual accountability report, every school district shall collect and report graduation rates for each high school in the school district. As part of the graduation rate data, the school district shall indicate contributing

factors to nongraduation such as transfer out of the school district, pregnancy, dropout and other factors as known."

SENATE BILL 394

CHAPTER 19

CHAPTER 19, LAWS 2003

AN ACT

RELATING TO PROFESSIONAL LICENSURE; RENAMING THE NEW MEXICO BOARD OF MEDICAL EXAMINERS; CHANGING MEMBERSHIP; PRESCRIBING POWERS AND DUTIES; CHANGING REQUIREMENTS AND PROCEDURES FOR LICENSURE AS PHYSICIANS; PROVIDING FEES; TRANSFERRING FUNCTIONS, PERSONNEL, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES OF THE

NEW MEXICO BOARD OF MEDICAL EXAMINERS TO THE NEW MEXICO MEDICAL BOARD; INCREASING CIVIL PENALTIES.

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

Section 1. Section 61-6-1 NMSA 1978 (being Laws 1989, Chapter 269, Section 1) is amended to read:

"61-6-1. SHORT TITLE--PURPOSE.--

A. Chapter 61, Article 6 NMSA 1978 may be cited as the "Medical Practice Act".

B. In the interest of the public health, safety and welfare and to protect the public from the improper, unprofessional, incompetent and unlawful practice of medicine, it is necessary to provide laws and rules controlling the granting and use of the privilege to practice medicine and to establish a medical board to implement and enforce the laws and rules.

C. The primary duties and obligations of the medical board are to issue licenses to qualified physicians, physician assistants and anesthesiologist assistants, to discipline incompetent or unprofessional physicians, physician assistants or anesthesiologist assistants and to aid in the rehabilitation of impaired physicians, physician assistants and anesthesiologist assistants for the purpose of protecting the public."

Section 2. Section 61-6-2 NMSA 1978 (being Laws 1923, Chapter 44, Section 1, as amended) is amended to read:

"61-6-2. NEW MEXICO MEDICAL BOARD--APPOINTMENT--TERMS--QUALIFICATIONS.--

A. There is created the "New Mexico medical board", consisting of nine members. The board shall be composed of two public members, one physician assistant and six reputable physicians of known ability who are graduates of medical colleges or schools in good standing and who have been licensed physicians in and bona fide residents of New Mexico for a period of five years immediately preceding the date of their appointment. The physician assistant shall have been a licensed physician assistant and a resident of New Mexico for at least five years immediately preceding the date of appointment. Public members of the board shall be residents of New Mexico, shall not have been licensed by the board or have practiced as physicians and shall have no significant financial interest, direct or indirect, in the occupation regulated.

B. The governor shall appoint the physician members from a list of names submitted to the governor by the New Mexico medical society or its authorized governing body or council. The list shall contain five names of qualified physicians for each physician member to be appointed. Physician member vacancies shall be filled in the same manner.

C. The governor shall appoint the physician assistant member from a list of names submitted to the governor by the New Mexico academy of physician assistants or its authorized governing body or council. The list shall contain five names of qualified physician assistants.

D. Members shall be appointed to four-year terms, staggered so that not more than three terms expire in a year. All board members shall hold office until their successors are appointed and qualified.

E. A board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board unless excused from attendance by the board for good cause shown."

Section 3. Section 61-6-3 NMSA 1978 (being Laws 1989, Chapter 269, Section 3) is amended to read:

"61-6-3. MEETINGS OF THE BOARD--QUORUM.--

A. The board shall hold four regular meetings every fiscal year.

B. During the second quarter of each year, the board shall hold its annual meeting during which it shall elect officers.

C. In addition to the regular meetings, the board may hold special meetings at the call of the president after written notice to all members of the board or at the written or electronic request of any two members.

D. A majority of the members of the board shall constitute a quorum and shall be capable of conducting any board business. The vote of a majority of a quorum shall prevail, even though the vote may not represent an actual majority of all the board members."

Section 4. Section 61-6-4 NMSA 1978 (being Laws 1989, Chapter 269, Section 4) is amended to read:

"61-6-4. ELECTION--DUTIES OF OFFICERS--REIMBURSEMENT OF BOARD MEMBERS.--

A. At its annual meeting, the board shall elect a chair, a vice chair and a secretary-treasurer.

B. The chair shall preside over the meetings and affairs of the board.

C. The vice chair shall perform such duties as may be assigned by the chair and shall serve as chair due to the absence or incompetence of the chair.

D. The secretary-treasurer shall:

(1) review applications for licensure and interview applicants to determine eligibility for licensure;

(2) issue temporary licenses pursuant to Section 61-6-14 NMSA 1978;

(3) serve on committees related to board activities that require physician participation;

(4) serve as a consultant on medical practice issues when a board action is not required; and

(5) perform any other functions assigned by the board or by the chair.

E. The secretary-treasurer may be compensated at the discretion of the board.

F. Board members shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance, except that the secretary-treasurer may be additionally compensated as

provided in Subsection E of this section and board members may be additionally compensated in accordance with Subsection G of this section.

G. Board members or agents performing interviews of applicants may be compensated at the board's discretion."

Section 5. Section 61-6-5 NMSA 1978 (being Laws 1973, Chapter 361, Section 2, as amended) is amended to read:

"61-6-5. DUTIES AND POWERS.--The board shall:

A. enforce and administer the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act;

B. adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules for the implementation and enforcement of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board, as appropriate;

E. take testimony on matters within the board's jurisdiction;

F. keep an accurate record of all its meetings, receipts and disbursements;

G. maintain records in which the name, address and license number of all licensees shall be recorded, together with a record of all license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines;

H. grant, deny, review, suspend and revoke licenses to practice medicine and censure, reprimand, fine and place on probation and stipulation licensees and applicants in accordance with the Uniform Licensing Act for any cause stated in the Medical Practice Act and the Impaired Health Care Provider Act;

I. hire staff and administrators as necessary to carry out the provisions of the Medical Practice Act;

J. have the authority to hire or contract with investigators to investigate possible violations of the Medical Practice Act;

K. have the authority to hire 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 medical profession and to fix the compensation to be paid to such attorney; provided, however, that such attorney shall be compensated from the funds of the board;

L. establish continuing medical education requirements for licensed physicians and continuing education requirements for physician assistants;

M. establish committees as it deems necessary for carrying on its business; and

N. hire or contract with a licensed physician to serve as medical director and fulfill specified duties of the secretary-treasurer."

Section 6. 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. "approved postgraduate training program" means a program approved by the accrediting council on graduate medical education of the American medical association or by the board;

B. "board" means the New Mexico medical board;

C. "licensed physician" means a medical doctor licensed under the Medical Practice Act to practice medicine in New Mexico;

D. "licensee" means a medical doctor, physician assistant or anesthesiologist assistant licensed by the board to practice in New Mexico;

E. "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;

F. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

G. "physician assistant" means a health professional who is licensed by the board to practice as a physician assistant and who provides services to patients under the supervision and direction of a licensed physician;

H. "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. "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 "fellow" 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 a drug or medicine for the use of another 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 a drug or medicine for the use of another person, except as directed by a licensed physician;

(4) offering or undertaking to perform an operation or procedure upon a 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 a 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 a person in doing any of the things listed in this subsection;

K. "the practice of medicine across state lines" means:

(1) the rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent; or

(2) the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent;

L. "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;

M. "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

N. "United States" means the fifty states, its territories and possessions and the District of Columbia."

Section 7. Section 61-6-7 NMSA 1978 (being Laws 1973, Chapter 361, Section 3, as amended) is amended to read:

"61-6-7. SHORT TITLE--LICENSURE AS A PHYSICIAN ASSISTANT--SCOPE OF PRACTICE--BIENNIAL REGISTRATION OF SUPERVISION--LICENSE RENEWAL--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 as a physician assistant a qualified person who has graduated from a physician assistant or surgeon assistant program accredited by the national accrediting body as established by rule and has passed a physician assistant national certifying examination as established by rule. The board may also license as a physician assistant a person who passed the physician assistant national certifying examination administered by the national commission on certification of physician assistants prior to 1986.

C. A person shall not 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 registering his supervising licensed physician in accordance with board rules.

D. Physician assistants may prescribe, administer and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act pursuant to rules adopted by the board after consultation with the board of pharmacy if 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 Subsection C 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.

E. A physician assistant shall perform only the acts and duties assigned to the physician assistant by a supervising licensed physician that are within the scope of practice of the supervising licensed physician.

F. 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.

G. A physician assistant shall biennially submit proof of current certification by the national commission on certification of physician assistants and shall renew the license and registration of supervision of the physician assistant with the board. 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.

H. Before starting work, a physician assistant shall ensure that the supervising licensed physician of the physician assistant is registered by the board. The license of a physician assistant shall only be valid when the physician assistant works under the supervision of a board-registered licensed physician.

I. Each biennial renewal of licensure shall be accompanied by a fee as provided in Section 61-6-19 NMSA 1978."

Section 8. Section 61-6-7.2 NMSA 1978 (being Laws 1997, Chapter 187, Section 3) is amended to read:

"61-6-7.2. INACTIVE LICENSE.--

A. A physician assistant license shall expire every two years on a date established by the board.

B. 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.

C. 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.

D. 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.

E. The board may, in its discretion, summarily suspend for nonpayment of fees the license of a physician assistant who has not renewed his license within ninety days of expiration.

F. A physician assistant who has not submitted an application for renewal on or before the license expiration date, but who has submitted an application for renewal within forty-five days after the license expiration date, shall be assessed a late fee.

G. A physician assistant who has not submitted an application for renewal between forty-six and ninety days after the expiration date shall be assessed a late fee."

Section 9. 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.--The board may adopt and enforce reasonable rules for:

A. 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;

B. examining and evaluating an applicant for licensure as a physician assistant as to skill, knowledge and experience of the applicant in the field of medical care;

C. 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 rules adopted by the board after consultation with the board of pharmacy;

D. allowing a supervising licensed physician to temporarily delegate supervisory responsibilities for a physician assistant to another licensed physician;

E. allowing a physician assistant to temporarily serve under the supervision of a licensed physician other than the supervising licensed physician of record; and

F. carrying out all other provisions of the Physician Assistant Act."

Section 10. Section 61-6-10 NMSA 1978 (being Laws 1973, Chapter 361, Section 6, as amended) is amended to read:

"61-6-10. SUPERVISING LICENSED PHYSICIAN--

--RESPONSIBILITY.--

A. As a condition of licensure, all physician assistants practicing in New Mexico shall inform the board of the name of the licensed 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 licensed 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 responsibility and liability for the acts and omissions of the physician assistant.

C. A licensed physician shall not supervise 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 or for good cause shown, the board may authorize a greater number upon a finding that the program provides adequate supervision of the physician assistants."

Section 11. Section 61-6-10.2 NMSA 1978 (being Laws 2001, Chapter 311, Section 2) is amended to read:

"61-6-10.2. DEFINITIONS.--As used in the Anesthesiologist Assistants Act:

A. "anesthesiologist" means a physician licensed to practice medicine in New Mexico who has successfully completed an accredited anesthesiology graduate medical education program, who is board certified by the American board of anesthesiology or board eligible, who has completed a residency in anesthesiology within the last three years and who is an employee of the department of anesthesiology of a medical school in New Mexico;

B. "anesthesiologist assistant" means a skilled person employed or to be employed by a university in New Mexico with a medical school certified by the board as being qualified by academic and practical training to assist an anesthesiologist in developing and implementing anesthesia care plans for patients under the supervision and direction of the anesthesiologist who is responsible for the performance of the anesthesiologist assistant;

C. "applicant" means a person who is applying to the board for a license as an anesthesiologist assistant;

D. "board" means the New Mexico medical board; and

E. "license" means an authorization to practice as an anesthesiologist assistant."

Section 12. 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 consider for licensure a person who is of good moral character, is a graduate of a medical college or school in good standing, has passed an examination approved by the board and has completed two years of an approved postgraduate training program.

B. An applicant who has not completed two years of an approved postgraduate training program, 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 the approved postgraduate training program. The board shall, in its sole discretion, determine if the professional experience is substantially equivalent to the required approved postgraduate training program.

C. A graduate of a board-approved 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 an approved postgraduate training program.

D. All applicants for licensure may be required to appear personally before the board or a designated agent for an interview.

E. An applicant for licensure by examination shall not be granted a license if the applicant has taken the examination in two or more steps and has failed to successfully pass the final step within seven years of the date that the first step was passed. An applicant for licensure who holds a medical doctor degree and a doctoral degree in a medically related field must successfully complete the entire examination series within ten years from the date the first step of the examination is passed.

F. Every applicant for licensure under this section shall pay the fees required by Section 61-6-19 NMSA 1978.

G. The board may require fingerprints and other information necessary for a state and national criminal background check."

Section 13. Section 61-6-13 NMSA 1978 (being Laws 1989, Chapter 269, Section 9, as amended) is amended to read:

"61-6-13. LICENSURE BY ENDORSEMENT.--

A. The board may grant a license without examination and by endorsement to an applicant who is properly endorsed by the officers of the examining board with jurisdiction or by the Canadian medical council and:

(1) has graduated from a medical college or school in good standing;

(2) is board certified in a specialty recognized by the American board of medical specialties;

(3) has been a licensed physician in the United States or Canada and has practiced medicine in the United States or Canada immediately preceding the application for at least three years;

(4) holds an unrestricted license in another state or Canada; and

(5) was not the subject of a disciplinary action in a state or province.

B. The board may grant a license by endorsement to an applicant who is properly endorsed by the officers of the examining board with jurisdiction or by the Canadian medical council and:

(1) has graduated from a medical college located outside the United States or Canada;

(2) is of good moral character;

(3) is in compliance with the United States immigration laws;

(4) is board certified in a specialty recognized by the American board of medical specialties;

(5) has been a licensed physician in the United States or Canada and has practiced medicine in the United States or Canada immediately preceding the application for at least three years;

(6) holds an unrestricted license in another state or Canada; and

(7) was not the subject of disciplinary action in a state or province.

C. An endorsement provided pursuant to this section shall certify that the applicant has passed an examination that meets with board approval and that the applicant is in good standing in that jurisdiction. In cases when the applicant is board-certified, has not been the subject of disciplinary action that would be reportable to the national practitioner data bank or the healthcare integrity and protection data bank and has unusual skills and experience not generally available in this state, and patients residing in this state have a significant need for such skills and experience, the board may waive a requirement imposing time limits for examination completion that are different from requirements of the state where the applicant is licensed.

D. An applicant for licensure under this section may be required to personally appear before the board or a designated agent for an interview.

E. An applicant for licensure under this section shall pay an application fee as provided in Section 61-6-19 NMSA 1978.

F. The board may require fingerprints and other information necessary for a state and national criminal background check."

Section 14. Section 61-6-14 NMSA 1978 (being Laws 1953, Chapter 48, Section 2, as amended) is amended to read:

"61-6-14. ORGANIZED YOUTH CAMP OR SCHOOL TEMPORARY LICENSES AND TEMPORARY LICENSES FOR OUT-OF-STATE

PHYSICIANS.--

A. The secretary-treasurer of the board may issue to an applicant qualified to practice medicine and surgery in this state, either by examination or by endorsement, who will be temporarily in attendance at an organized youth camp or school, a temporary license to practice medicine and surgery, the practice to be confined to enrollees, leaders and employees of the camp or school and the following provisions shall apply:

(1) the temporary license shall be issued for a period not to exceed three months from date of issuance; and

(2) the temporary license may be issued upon written application of the applicant, accompanied by such proof of the qualifications of the applicant as specified by board rule.

B. The secretary-treasurer of the board may issue to an applicant who is licensed to practice medicine in another state, territory of the United States or another country and who is qualified to practice medicine and surgery in this state a temporary license to practice medicine under the supervision of a licensed physician. The following provisions shall apply:

(1) the temporary license may be issued upon written application of the applicant, accompanied by proof of qualifications as specified by rule of the board. A temporary license may be granted to allow the applicant to assist in teaching, conducting research, performing specialized diagnostic and treatment procedures, implementing new technology and for physician educational purposes. A licensee may engage in only the activities specified on the temporary license, and the temporary license shall identify the licensed physician who will supervise the applicant during the time the applicant practices medicine in New Mexico. The supervising licensed physician shall submit an affidavit attesting to the qualifications of the applicant and activities the applicant will perform; and

(2) the temporary license shall be issued for a period not to exceed three months from date of issuance and may be renewed upon application and payment of fees as provided in Section 61-6-19 NMSA 1978.

C. The application for a temporary license under this section shall be accompanied by a license fee as provided in Section 61-6-19 NMSA 1978."

Section 15. 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.--

A. The board may refuse to license and may revoke or suspend a license that has been issued by the board or a previous board and may fine, censure or reprimand a 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, or practice as a physician assistant or an anesthesiologist assistant, 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 the terms and conditions it deems proper for protection of the public, for the purpose of 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 licensee is competent to practice, 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 the licensee has not complied with the terms of probation, the board may revoke or suspend the license. If a license to practice in this state is suspended, the holder of the license may not practice during the term of suspension. A person whose license has been revoked or suspended by the board and who thereafter practices or attempts or offers to practice in New Mexico, unless the period of suspension has expired or been modified by the board or the 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, but is not limited to because of enumeration, conduct of a licensee that includes the following:

- (1) procuring, aiding or abetting a criminal abortion;
- (2) employing a person to solicit patients for the licensee;
- (3) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;
- (4) obtaining a fee by fraud or misrepresentation;
- (5) willfully or negligently divulging a professional confidence;
- (6) conviction of an offense punishable by incarceration in a state penitentiary or federal prison or conviction of a misdemeanor associated with the practice of the licensee. 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 skill of the licensee or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the licensee or at the direction of the licensee in the treatment of a disease or other condition of the human body or mind;

(10) impersonating another licensee, permitting or allowing a person to use the license of the licensee or practicing as a licensee under a false or assumed name;

board; (11) aiding or abetting the practice of a person not licensed by the

(12) gross negligence in the practice of a licensee;

(13) manifest incapacity or incompetence to practice as a licensee;

(14) discipline imposed on a licensee 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 a false, fraudulent or deceptive statement in a document connected with the practice of a licensee;

(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;

the licensee by: (21) failure to report to the board any adverse action taken against

(a) another licensing jurisdiction;

(b) a peer review body;

(c) a health care entity;

(d) a professional or medical society or association;

(e) a governmental agency;

(f) a law enforcement agency; or

(g) a 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 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 a drug or medicine;

(27) failure to adequately supervise, as provided by board rule, a medical or surgical assistant or technician or professional licensee who renders health care;

(28) sexual contact with a patient or person who has authority to make medical decisions for a patient, other than the spouse of the licensee, after representing or inferring that the activity is a legitimate part of the patient's treatment;

(29) conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public;

(30) the surrender of a license or withdrawal of an application for a license before another state licensing board while an investigation or disciplinary action is pending before that board for acts or conduct similar to acts or conduct that would constitute grounds for action pursuant to this section;

(31) sexual contact with a former mental health patient of the licensee, other than the spouse of the licensee, within one year from the end of treatment;

(32) sexual contact with a patient when the licensee uses or exploits treatment, knowledge, emotions or influence derived from the previous professional relationship;

(33) improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records;

(34) failure to provide pertinent and necessary medical records to a physician or patient of the physician in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient;

(35) undertreatment of pain as provided by board rule;

(36) interaction with physicians, hospital personnel, patients, family members or others that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;

(37) soliciting or receiving compensation by a physician assistant or anesthesiologist assistant from a person who is not an employer of the assistant; or

(38) willfully or negligently divulging privileged information or a professional secret.

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 a person, irrespective of any membership, proprietary interest or co-ownership in or with a person to whom the patients, clients or customers are referred.

F. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including laboratory costs when laboratory testing of biological fluids are included as a condition of probation."

Section 16. Section 61-6-16 NMSA 1978 (being Laws 1989, Chapter 269, Section 12) is amended to read:

"61-6-16. REPORTING OF SETTLEMENTS AND JUDGMENTS, PROFESSIONAL REVIEW ACTIONS AND ACCEPTANCE OF SURRENDERED LICENSE--IMMUNITY FROM CIVIL DAMAGES--PENALTY.--

A. All entities that make payments under a policy of insurance, self-insurance or otherwise in settlement or satisfaction of a judgment in a medical malpractice action or claim, hospitals, health care entities and professional review bodies shall report to the board all payments relating to malpractice actions or claims arising in New Mexico, all appropriate professional review actions of licensees and the acceptance or surrender of clinical privileges by a licensee while under investigation or in lieu of an investigation. For the purposes of this section, the meaning of these terms shall be as contained in Section 431 of the federal Health Care Quality Improvement Act of 1986, 42 USCA Section 11151.

B. The hospitals required to report under this section, health care entities or professional review bodies that provide such information in good faith shall not be subject to suit for civil damages as a result of providing the information.

C. A hospital, health care entity or professional review body failing to comply with the reporting requirements provided in this section shall be subject to civil penalty not to exceed ten thousand dollars (\$10,000)."

Section 17. 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 on a patient from inside of New Mexico to another state or back, provided 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. an act, task or function performed by a physician assistant at the direction of and under the supervision of a licensed physician, when:

- (1) the physician assistant is currently licensed by the board;
- (2) the act, task or function is performed at the direction of and under the supervision of a licensed physician in accordance with rules 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. an 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 a 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;

J. the practice of the religious tenets of a 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 a person from the operation or enforcement of the sanitary and quarantine laws of the state;

K. the acts of a physician licensed under the laws of another state of the United States who is the treating physician of a patient and orders home health or hospice services for a resident of New Mexico to be delivered by a home and community support services agency licensed in this state; provided that a change in the condition of the patient shall be physically reevaluated by the treating physician in the treating physician's jurisdiction or by a licensed New Mexico physician;

L. a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico-licensed physician on an irregular or infrequent basis, as defined by rule of the board; and

M. a physician who engages in the informal practice of medicine across state lines without compensation or expectation of compensation; provided that the practice of medicine across state lines conducted within the parameters of a contractual relationship shall not be considered informal and is subject to licensure and rule by the board."

Section 18. Section 61-6-18.1 NMSA 1978 (being Laws 1994, Chapter 80, Section 10) is amended to read:

"61-6-18.1. PUBLIC SERVICE LICENSE.--

A. Applicants for a public service license shall meet all requirements for licensure and shall:

(1) be enrolled in a board-approved residency training program either in New Mexico or in another jurisdiction;

(2) obtain written approval from the training program director of the applicant to pursue a public service practice opportunity outside the residency training program;

(3) obtain advance written approval from the training program director of the applicant to return to the residency training program following the period of public service; and

(4) satisfy other reasonable requirements imposed by the board.

B. A physician with one year postdoctoral training may apply for a public service license when he is under the direct supervision of a licensed physician or has

immediate access to a licensed physician by electronic means when the public service physician is employed in a medically underserved area.

C. A public service license shall be valid for a period of time not to exceed twelve months. A public service license may be renewed by the board.

D. An applicant for a public service license shall pay the required fees set forth in Section 61-6-19 NMSA 1978."

Section 19. 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) a triennial renewal fee not to exceed four hundred fifty dollars (\$450);

(4) a fee of twenty-five dollars (\$25.00) for placing a physician's license or a physician assistant's license on inactive status;

(5) a late fee not to exceed one hundred dollars (\$100) for physicians who renew their license within forty-five days after the required renewal date;

(6) a late fee not to exceed two hundred dollars (\$200) for physicians who renew their licenses between forty-six and ninety days after the required renewal date;

(7) a reinstatement fee not to exceed six hundred dollars (\$600) 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;
- (15) a licensure fee not to exceed one hundred fifty dollars (\$150) for physician assistants biennial licensing and registration of supervising licensed physician;
- (16) a late fee not to exceed fifty dollars (\$50.00) for physician assistants who renew their licensure within forty-five days after the required renewal date;
- (17) a late fee not to exceed seventy-five dollars (\$75.00) for physician assistants who renew their licensure between forty-six and ninety days after the required renewal date;
- (18) a reinstatement fee not to exceed one hundred dollars (\$100) for physician assistants who reinstate an expired license;
- (19) a processing fee not to exceed fifty dollars (\$50.00) for each change of a supervising licensed physician for a physician assistant;
- (20) a fee not to exceed three hundred dollars (\$300) annually for a physician supervising a clinical pharmacist; and
- (21) an application and renewal fee for a telemedicine license not to exceed four hundred dollars (\$400).

B. All fees are nonrefundable and shall be used by the board to carry out its duties efficiently."

Section 20. Section 61-6-21 NMSA 1978 (being Laws 1989, Chapter 269, Section 17) is amended to read:

"61-6-21. CONTINUING MEDICAL EDUCATION--PENALTY.--

A. The board may establish rules pertaining to continuing medical education for licensees.

B. The board may suspend the license of a licensee who fails to comply with continuing medical education or continuing education requirements until the requirements are fulfilled."

Section 21. Section 61-6-23 NMSA 1978 (being Laws 1989, Chapter 269, Section 19) is amended to read:

"61-6-23. INVESTIGATION--SUBPOENA.--To investigate a complaint against a licensee, the board may issue investigative subpoenas prior to the issuance of a notice of contemplated action."

Section 22. Section 61-6-26 NMSA 1978 (being Laws 1989, Chapter 269, Section 22, as amended) is amended to read:

"61-6-26. TRIENNIAL RENEWAL FEES--PENALTY FOR FAILURE TO RENEW LICENSE.--

A. On or before July 1 of every third year, every licensed physician in this state shall apply for a certificate of triennial renewal of license for the ensuing three years. The fact that a licensed physician has not received a renewal form from the board shall not relieve the physician of the duty to renew the license and the omission by the board shall not operate to exempt the physician from the penalties provided by Chapter 61, Article 6 NMSA 1978 for failure to renew his license.

B. All licensed physicians shall pay a triennial renewal fee and impaired physicians fee as provided in Section 61-6-19 NMSA 1978 and shall return the completed renewal form together with the renewal fee and other required documentation.

C. Each application for triennial renewal of license shall state the licensed physician's full name, business address, license number and date and all other information requested by the board.

D. A licensed physician who fails to submit his application for triennial renewal on or before July 1 but who submits his application for triennial renewal by August 15 shall be assessed a late fee as provided in Section 61-6-19 NMSA 1978.

E. A physician who submits the application for triennial renewal between August 16 and September 30 shall be assessed a cumulative late fee as provided in Paragraph (6) of Subsection A of Section 61-6-19 NMSA 1978.

F. After September 30, the board may, in its discretion, summarily suspend for nonpayment of fees the license of a physician who has failed to renew his license."

Section 23. Section 61-6-27 NMSA 1978 (being Laws 1945, Chapter 74, Section 2, as amended) is amended to read:

"61-6-27. ISSUANCE AND DISPLAY OF RENEWAL CERTIFICATE.--The board shall issue to each licensed physician, upon application in accordance with the provisions of the Medical Practice Act and upon payment of the appropriate fees and upon documentation of continuing education requirements, a certificate of triennial renewal, under the seal of the board, for the ensuing three years. The certificate of renewal shall contain the licensed physician's name, business address, license date and number and other information as the board deems advisable. The certificate of triennial renewal shall, at all times, be displayed conspicuously in the principal office or practice location of the licensed physician to whom it has been issued."

Section 24. Section 61-6-28 NMSA 1978 (being Laws 1945, Chapter 74, Section 3, as amended) is amended to read:

"61-6-28. LICENSED PHYSICIANS--CHANGING LOCATION.--A licensed physician who changes the location of his office or residence shall promptly notify the board of the change."

Section 25. Section 61-6-30 NMSA 1978 (being Laws 1969, Chapter 46, Section 15, as amended) is amended to read:

"61-6-30. RESTORATION OF GOOD STANDING--FEES AND OTHER REQUIREMENTS.--

A. Before restoring to good standing a license that has been in a revoked, suspended or inactive status for any cause for more than two years, the board may require the applicant to pass an oral or written examination, or both, to determine the current fitness of the applicant to resume practice and may impose conditions in its discretion.

B. The authority of the board to impose terms and conditions includes, but is not limited to, the following:

(1) requiring the applicant to obtain additional training and to pass an examination upon completion of such training; or

(2) restricting or limiting the extent, scope or type of practice of the applicant.

C. The board shall also consider the moral background and the activities of the applicant during the period of suspension or inactivity.

D. If the board in its discretion determines that the applicant is qualified to be reissued a license in good standing, the applicant shall pay to the board a reinstatement fee."

Section 26. Section 61-6-31 NMSA 1978 (being Laws 1989, Chapter 269, Section 27) is amended to read:

"61-6-31. DISPOSITION OF FUNDS--NEW MEXICO MEDICAL BOARD FUND CREATED--METHOD OF PAYMENTS.--

A. There is created the "New Mexico medical board fund".

B. All funds received by the board and money collected under the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act shall be deposited with the state treasurer who shall place the same to the credit of the New Mexico medical board fund.

C. All payments out of the fund shall be made on vouchers issued and signed by the secretary-treasurer of the board or the designee of the secretary-treasurer upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts in the New Mexico medical board fund shall be subject to the order of the board and shall be used only for the purpose of meeting necessary expenses incurred in:

(1) the performance of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act and the duties and powers imposed by those acts; and

(2) the promotion of medical education and standards in this state within the budgetary limits.

E. All funds that may have accumulated to the credit of the board under any previous law shall be transferred to the New Mexico medical board fund and shall continue to be available for use by the board in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the fund for use in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act."

Section 27. Section 61-6-33 NMSA 1978 (being Laws 1989, Chapter 269, Section 29, as amended) is amended to read:

"61-6-33. LICENSURE STATUS.--Upon a verified written request, a licensee may request that the license be put in retirement, inactive or voluntary lapsed status. Upon request for reinstatement of active status, the board may impose conditions as provided in Section 61-6-30 NMSA 1978."

Section 28. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW.--On July 1, 2003:

A. all functions, personnel, appropriations, money, records, equipment, supplies and other property of the New Mexico board of medical examiners shall be transferred to the New Mexico medical board;

B. all contracts of the New Mexico board of medical examiners shall be binding and effective on the New Mexico medical board; and

C. all references in law to the New Mexico board of medical examiners shall be deemed to be references to the New Mexico medical board.

Section 29. REPEAL.--Sections 61-6-8, 61-6-8.1, 61-6-10.8 and 61-6-29 NMSA 1978 (being Laws 1973, Chapter 361, Section 4, Laws 1997, Chapter 187, Section 6, Laws 2001, Chapter 311, Section 8 and Laws 1989, Chapter 269, Section 25, as amended) are repealed.

SENATE JUDICIARY COMMITTEE SUBSTITUTE
FOR SENATE BILL 171, WITH CERTIFICATE
OF CORRECTION

CHAPTER 20

CHAPTER 20, LAWS 2003

AN ACT

AUTHORIZING THE COMMISSION ON HIGHER EDUCATION TO MAKE EXPENDITURE OF ALREADY APPROPRIATED FUNDS FOR A LOAN-FOR-SERVICE FINANCIAL AID PROGRAM IN FISCAL YEAR 2003 WITH BAYLOR UNIVERSITY TO TRAIN DENTISTS TO WORK IN NEW MEXICO; DECLARING AN EMERGENCY.

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

Section 1. TEMPORARY PROVISION--AUTHORIZATION FOR EXPENDITURE.--The commission on higher education is authorized to make expenditure of funds already appropriated for fiscal year 2003 to provide a loan-for-service financial aid program pursuant to a contract with Baylor university to train dentists to work in New Mexico. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund.

Section 2. EMERGENCY.--It is necessary for the public

peace, health and safety that this act take effect

immediately.

SENATE BILL 247, AS AMENDED,

WITH EMERGENCY CLAUSE

SIGNED MARCH 16, 2003

CHAPTER 21

CHAPTER 21, LAWS 2003

AN ACT

RELATING TO PER DIEM AND MILEAGE; ALLOWING SPECIAL HOSPITAL DISTRICTS TO ESTABLISH MILEAGE REIMBURSEMENT RATES; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 4-48A-9 NMSA 1978 (being Laws 1978, Chapter 29, Section 9, as amended) is amended to read:

"4-48A-9. BOARD OF TRUSTEES--POWERS.--The board of trustees may:

A. acquire, construct, operate or maintain one or more hospital facilities in the special hospital district for the purposes for which the special hospital district was created;

B. receive and expend all funds accruing to the special hospital district pursuant to any provision of the Special Hospital District Act through the sale of bonds or the levy of taxes, paid from any source on account of patients accommodated at the hospital, from any gift or bequest or from any federal, state or private grant;

C. enter into contracts, including contracts with the federal government and the departments and agencies thereof or the state government and the departments, institutions and agencies thereof, for the treatment of or the hospitalization of patients under the jurisdiction of such entities;

D. adopt and use a seal to authenticate its official transactions;

E. sue and be sued;

F. adopt rules and regulations for the governing of the special hospital district;

G. employ and fix the compensation of an executive director of the special hospital district and such other staff and clerical personnel it deems necessary;

H. employ a hospital administrator for hospital facilities under its control and approve or disapprove the recommendations of such administrator pertaining to compensation and employment benefits for hospital employees;

I. fix the mileage reimbursement rate for travel on official business in a privately owned vehicle by employees of hospital facilities under its control, provided that the rate shall not exceed the internal revenue service standard mileage rate for use of a vehicle for business;

J. exercise all powers necessary and requisite for the accomplishment of the purposes for which the special hospital district is created;

K. issue bonds in the manner provided by law for the issuance of special hospital district revenue bonds for the construction, purchase, renovation, remodeling, equipping or re-equipping of hospital facilities under its control and purchasing the necessary land therefor;

L. charge for hospital services rendered;

M. lease a hospital to any person, corporation or association for the operation and maintenance of the hospital upon such terms and conditions as the board of trustees may determine, provided that the lease may be terminated by the board of trustees without cause upon one hundred eighty days' notice after the first three years of the lease;

N. enter into an agreement with another county or counties, another county or counties and another political subdivision or any other person, corporation or association that provides that the parties to the agreement shall join together for the purpose of making some or all purchases necessary for the operation of hospitals owned or operated by the parties; and to designate one of the parties as the central purchasing office, as defined in the Procurement Code, for the others, to make purchases for the parties to the agreement as they shall deem necessary and to comply with the provisions of the Procurement Code; and

O. expend public money to recruit health care personnel to serve the sick of the special hospital district."

Section 2. Section 10-8-6 NMSA 1978 (being Laws 1971, Chapter 116, Section 5) is amended to read:

"10-8-6. APPLICATION OF ACT.--

A. The Per Diem and Mileage Act shall not apply to the members of the legislature unless the legislature by specific reference to the act makes it applicable to the members and such application does not thereby exceed the per diem and mileage rates fixed in the constitution of New Mexico.

B. The provisions of Subsection D of Section

10-8-4 NMSA 1978 pertaining to the mileage reimbursement rate for travel in a privately owned vehicle shall not apply to employees of a hospital facility under the control of the board of trustees of a special hospital district created pursuant to the provisions of the Special Hospital District Act, if the board of trustees has fixed a mileage reimbursement rate for those employees."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 476

CHAPTER 22

CHAPTER 22, LAWS 2003

AN ACT

RELATING TO LICENSING LAWS; REVISING REAL ESTATE LICENSING FEES;
REQUIRING CONSENT TO BE SUED IN NEW MEXICO AS A QUALIFICATION FOR

OBTAINING A REAL ESTATE LICENSE; REMOVING THE STATUTORY LIMIT ON LATE FEES FOR LICENSE RENEWAL; PROVIDING THAT A CERTAIN BALANCE IN THE REAL ESTATE RECOVERY FUND BE TRANSFERRED TO THE REAL ESTATE COMMISSION FUND; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 61-29-4 NMSA 1978 (being Laws 1959, Chapter 226, Section 3, as amended) is amended to read:

"61-29-4. CREATION OF COMMISSION--POWERS AND DUTIES.--There is created the "New Mexico real estate commission". The commission shall be appointed by the governor and shall consist of five members who shall have been residents of the state for three consecutive years immediately prior to their appointment, four of whom shall have been real estate brokers licensed in New Mexico and one of whom shall be a member of the public who has never been licensed as a real estate broker or salesperson; provided not more than one member shall be from any one county within the state. The members of the commission shall serve for a period of five years or until their successors are appointed and qualified. Members to fill vacancies shall be appointed for any unexpired term. The governor may remove any member for cause. The commission shall possess all the powers and perform all the duties prescribed by Chapter 61, Article 29 NMSA 1978 and as otherwise provided by law, and it is expressly vested with power and authority to make and enforce any rules and regulations to carry out the provisions of that article. Prior to any final action on any proposed changes or amendments to the rules and regulations of the commission, the commission may publish notice of the proposed action in its official publication, distribute the publication to each active licensee and give the time and place for a public hearing on the proposed changes. The hearing shall be held at least thirty days prior to any proposed final action. Any changes or amendments to the rules shall be filed in accordance with the procedures of the State Rules Act and shall become effective thirty days after notification to all active licensees of the filing of the changes or

amendments."

Section 2. Section 61-29-7 NMSA 1978 (being Laws 1959, Chapter 226, Section 6, as amended) is amended to read:

"61-29-7. REIMBURSEMENT AND EXPENSES.--Each member of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 3. Section 61-29-8 NMSA 1978 (being Laws 1959, Chapter 226, Section 7, as amended) is amended to read:

"61-29-8. LICENSE FEES--DISPOSITION.--

A. The following fees shall be established and charged by the commission and paid into the real estate commission fund:

(1) for each examination, a fee not to exceed ninety-five dollars (\$95.00);

(2) for each broker's license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(3) for each real estate salesperson's license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(4) subject to the provisions of Paragraph (10) of this subsection, for each change of place of business or change of employer or contractual associate, a fee not to exceed twenty dollars (\$20.00);

(5) for each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00);

(6) for each license history, a fee not to exceed twenty-five dollars (\$25.00);

(7) for copying of documents by the commission, a fee not to exceed one dollar (\$1.00) per copy;

(8) for each license law and rules and regulations booklet, a fee not to exceed ten dollars (\$10.00) per booklet;

(9) for each hard copy or electronic list of licensed real estate brokers and salespersons, a fee not to exceed twenty dollars (\$20.00);

(10) for each license reissued for a real estate salesperson because of change of address of the broker's office, death of the licensed broker when a successor licensed broker is replacing the decedent and the salesperson remains in the office or because of a change of name of the office or the entity of the licensed broker, a fee in an amount not to exceed twenty dollars (\$20.00) to be paid by the licensed broker or successor broker as the case may be; but if there are eleven or more affected salespersons in the licensed broker's office, the total fee paid to effect reissuance of all of those licenses shall not exceed two hundred dollars (\$200);

(11) for each application to the commission to become an approved sponsor of pre-licensing and continuing education courses, a fee not to exceed five

hundred dollars (\$500) and for each renewal thereof a fee not to exceed five hundred dollars (\$500);

(12) for each application to the commission to become an approved instructor of pre-licensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course; and

(13) for each application to the commission to renew certification as a commission-approved instructor, a fee not to exceed one hundred dollars (\$100).

B. All fees set by the commission shall be set by rule and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules shall be filed in accordance with the provisions of the State Rules Act.

C. The commission shall deposit all money received by it from fees in accordance with the provisions of Chapter 61, Article 29 NMSA 1978 with the state treasurer, who shall keep that money in a separate fund to be known as the "real estate commission fund", and money so deposited in that fund is appropriated for the purpose of carrying out the provisions of Chapter 61, Article 29 NMSA 1978 or to maintain the real estate recovery fund as required by the Real Estate Recovery Fund Act and shall be paid out of the fund upon the vouchers of the executive secretary of the commission or his designee; provided that the total fees and charges collected and paid into the state treasury and any money so deposited shall be expended only for the purposes authorized by Chapter 61, Article 29 NMSA 1978.

D. The commission shall by rule provide for a proportionate refund of the license issuance fee or the license renewal fee if the license is issued or renewed for a period of three years pursuant to Section 61-29-11 NMSA 1978 and is terminated with more than one year remaining."

Section 4. Section 61-29-9 NMSA 1978 (being Laws 1959, Chapter 226, Section 8, as amended) is amended to read:

"61-29-9. QUALIFICATIONS FOR LICENSE.--

A. Licenses shall be granted only to persons who are deemed by the commission to be of good repute and competent to transact the business of a real estate broker or salesperson in a manner that safeguards the interests of the public.

B. An applicant for a broker's license shall be a legal resident of the United States and have reached the age of majority. Each applicant for a broker's license shall have passed the real estate examination approved by the commission and shall:

(1) have performed actively as a real estate salesperson for at least twenty-four months out of the preceding thirty-six months immediately prior to filing

application and furnish the commission a certificate that he has completed successfully a broker basics course approved by the commission;

(2) furnish the commission a certificate that he has completed successfully one hundred eighty classroom hours of instruction in basic real estate courses approved by the commission;

(3) furnish the commission a certificate that he is a duly licensed real estate broker in good standing in another state, providing he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course; or

(4) furnish the commission satisfactory proof of his equivalent experience in an activity closely related to or associated with real estate and furnish the commission a certificate that he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course; and

(5) if not a resident of New Mexico, file with the commission an irrevocable consent that lawsuits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleadings authorized by the laws of this state on the commission, the consent stipulating and agreeing that such service of process or pleadings on the commission is as valid and binding as if personal service had been made upon the applicant in New Mexico. The instrument containing the consent shall be acknowledged and, if executed on behalf of a corporation or association, shall be accompanied by a certified copy of the resolution of the proper officers or managing board authorizing the executing officer to execute the instrument. Service of process or pleadings shall be served in duplicate upon the commission; one shall be filed in the office of the commission and the other immediately forwarded by registered mail to the main office of the applicant against which the process or pleadings are directed.

C. Each applicant for a real estate salesperson's license shall be a legal resident of the United States, have reached the age of majority, have passed the real estate examination approved by the commission and furnish the commission a certificate that he has completed successfully sixty classroom hours of instruction in basic real estate courses approved by the commission.

D. The commission shall require the information it deems necessary from every applicant to determine his honesty, trustworthiness and competency. Corporations, partnerships or associations may hold a broker's license issued in the name of the corporation, partnership or association, provided at least one member of the partnership or association or one officer or employee of a corporation who actively engages in the real estate business first secures a broker's license. The license shall be issued in the name of the corporation, partnership or association, naming the partner,

associate, officer or employee as qualifying broker for the corporation, partnership or association."

Section 5. Section 61-29-11 NMSA 1978 (being Laws 1959, Chapter 226, Section 10, as amended) is amended to read:

"61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF
LICENSES.--

A. The commission shall issue to each qualified applicant a license in the form and size prescribed by the commission.

B. The license shall show the name and address of the licensee. A real estate salesperson's license shall show the name of the broker by whom he is engaged. The license of the real estate salesperson shall be delivered or mailed to the broker by whom the real estate salesperson is engaged and shall be kept in the custody and control of that broker.

C. Every license shall be renewed every three years on or before the last day of the month following the licensee's month of birth. Upon written request for renewal by the licensee, the commission shall certify renewal of a license if there is no reason or condition that might warrant the refusal of the renewal of a license. The licensee shall provide proof of compliance with continuing education requirements and pay the renewal fee. If a licensee has not made application for renewal of license, furnished proof of compliance with continuing education requirements and paid the renewal fee by the license renewal date, the license shall expire. The commission may require a person whose license has expired to apply for a license as if he had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that he be reexamined. The commission shall require a person whose license has expired to pay when he applies for a license, in addition to any other fee, a late fee. If during a period of one year from the date the license expires the person or his spouse is either absent from this state on active duty military service or the person is suffering from an illness or injury of such severity that the person is physically or mentally incapable of making application for a license, payment of the late fee and reexamination shall not be required by the commission if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the commission for a license. A copy of that person's or his spouse's military orders or a certificate from the applicant's physician shall accompany the application. A person excused by reason of active duty military service, illness or injury as provided for in this subsection may make application for a license without imposition of the late fee. All fees collected pursuant to this subsection shall be disposed of in accordance with the provisions of Section 61-29-8 NMSA 1978. The revocation of a broker's license automatically suspends every real estate salesperson's license granted to any person by virtue of association with the broker whose license has been revoked, pending a change of broker. Upon the naming

of a new broker, the suspended license shall be reactivated without charge if granted during the three-year renewal cycle.

D. Each resident licensed broker shall maintain within this state a fixed office that conforms with local regulations. Every office operated by a licensed broker shall have a licensed broker in charge who is a natural person. The license of the broker and each real estate salesperson associated with that broker shall be prominently displayed in the office. The address of the office shall be designated in the broker's license, and no license issued shall authorize the licensee to transact real estate business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before the removal or within ten days thereafter, designating the new location of his office and paying the required fee, whereupon the commission shall issue a license for the new location if the new location complies with the terms of Chapter 61, Article 29 NMSA 1978. A licensed broker shall maintain a sign on his office of such size and content as the commission prescribes. In making application for a license or for a change of address, the licensee shall verify that his office conforms with local regulations.

E. When a real estate salesperson is discharged or terminates his association or employment with the broker with whom he is associated, it is the duty of that broker to deliver or mail to the commission that real estate salesperson's license within forty-eight hours. The commission shall hold the license on inactive status. It is unlawful for a real estate salesperson to perform any of the acts authorized by Chapter 61, Article 29 NMSA 1978 either directly or indirectly under authority of an inactive license after his association has been terminated and his license as salesperson has been returned to the commission as provided in that article until the appropriate fee has been paid and the license has been reissued by the commission."

Section 6. Section 61-29-22 NMSA 1978 (being Laws 1980, Chapter 82, Section 3, as amended) is amended to read:

"61-29-22. ADDITIONAL FEES.--

A. The commission shall collect an annual fee not in excess of ten dollars (\$10.00) from each real estate licensee prior to the issuance of the next license.

B. The commission shall collect from each successful applicant for an original real estate license, in addition to his original license fee, a fee not in excess of ten dollars (\$10.00).

C. The additional fees provided by this section shall be credited to the real estate recovery fund. The amount of the real estate recovery fund shall be maintained at two hundred fifty thousand dollars (\$250,000). If the real estate recovery fund falls below this amount, the commission shall have authority to adjust the annual amount of additional fees to be charged licensees or to draw on the real estate commission fund in order to maintain the fund level as required in this section. If on July 1 of any year, the

balance in the fund exceeds four hundred thousand dollars (\$400,000), the amount over four hundred thousand dollars (\$400,000) shall be transferred to the real estate commission fund to be used for the purposes of carrying out the provisions of Chapter 61, Article 29 NMSA 1978."

Section 7. REPEAL.--Section 61-29-14 NMSA 1978 (being Laws 1959, Chapter 226, Section 13, as amended) is repealed.

SENATE BILL 43, AS AMENDED

CHAPTER 23

CHAPTER 23, LAWS 2003

AN ACT

REPEALING LAWS 1998, CHAPTER 108, SECTION 82, AS AMENDED BY LAWS 2000, CHAPTER 88, SECTION 3 RELATING TO THE REPEAL OF PUBLIC UTILITY AND TELECOMMUNICATIONS LAWS.

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

Section 1. REPEAL.--Laws 1998, Chapter 108, Section 82, as amended by Laws 2000, Chapter 88, Section 3 is repealed.

SENATE BILL 350

CHAPTER 24

CHAPTER 24, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A SECTION OF THE MOTOR TRANSPORTATION ACT TO PROVIDE FOR CROSS-BORDER PASSAGE OF MEXICAN COMMERCIAL MOTOR VEHICLES; REQUIRING FINANCIAL RESPONSIBILITY; PROVIDING AN EXEMPTION FROM REGISTRATION.

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

Section 1. A new section of Chapter 65, Article 5 NMSA 1978 is enacted to read:

"MEXICAN COMMERCIAL MOTOR VEHICLES--MOVEMENT THROUGH BORDER COMMERCIAL ZONE--REGISTRATION EXEMPTION--FINANCIAL RESPONSIBILITY--DOMESTIC TRANSPORTATION.--

A. A Mexican commercial motor vehicle is exempt from requirements for motor vehicle registration in this state, including temporary registration, if the motor vehicle is engaged solely in movement across the international border between New Mexico and the United Mexican States into or from an international border commercial zone, and the motor vehicle is registered and licensed as required by the law of another country. A Mexican commercial motor vehicle and its driver operating pursuant to the exemption under this section may be considered unregistered if the motor vehicle is operated in this state outside the border commercial zone or in violation of United States law.

B. The department shall adopt rules that conform with federal law requiring motor carriers operating Mexican commercial motor vehicles in this state to maintain financial responsibility.

C. A Mexican commercial motor vehicle shall not transport persons or cargo in intrastate commerce in this state unless the motor vehicle is authorized to conduct operations in interstate and foreign commerce domestically between points in the United States under federal law or international agreement.

D. As used in this section:

(1) "border commercial zone" means a commercial zone established pursuant to federal law or regulations, any portion of which is contiguous to the border between this state and the United Mexican States; and

(2) "Mexican commercial motor vehicle" means a commercial motor carrier vehicle that is registered or titled in the United Mexican States.

HOUSE BILL 311

CHAPTER 25

CHAPTER 25, LAWS 2003

AN ACT

RELATING TO THE NEW MEXICO FINANCE AUTHORITY; EXPANDING THE DEFINITION OF QUALIFIED ENTITY; INCREASING THE ALLOWABLE AMOUNT FOR THE EQUIPMENT PROGRAM.

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

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. "emergency public project" means a public project:

(1) made necessary by an unforeseen occurrence or circumstance threatening the public health, safety or welfare; and

(2) requiring the immediate expenditure of money that is not within the available financial resources of the qualified entity as determined by the authority;

E. "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. "Public project" also includes the acquisition, construction or improvement of real property, buildings, facilities and other assets by the authority for the purpose of leasing the property;

F. "qualified entity" means the state or an agency or institution of the state or a county, municipality, school district, two-year public post-secondary educational institution, land grant corporation, acequia association, public improvement district, federally chartered college located in New Mexico, intercommunity water or natural gas supply association or corporation, 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 or a consortium of those Indian entities; and

G. "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 evidence of indebtedness of a qualified entity or from certificates or evidence of participation in a lease with a qualified entity."

Section 2. Section 6-21-6 NMSA 1978 (being Laws 1992, Chapter 61, Section 6, as amended) is amended to read:

"6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--

ADMINISTRATION.--

A. The "public project revolving fund" is created within the authority. The fund shall be administered by the authority as a separate account, but may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures and adopt rules as required to administer the fund in accordance with the New Mexico Finance Authority Act.

B. Except as otherwise provided in the New Mexico Finance Authority Act, money from payments of principal of and interest on loans and payments of principal of and interest on securities held by the authority for public projects authorized specifically by law shall be deposited in the public project revolving fund. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing public projects authorized specifically by law.

C. Money appropriated to pay administrative costs, money available for administrative costs from other sources and money from payments of interest on loans or securities held by the authority, including payments of interest on loans and securities held by the authority for public projects authorized specifically by law, that represents payments for administrative costs shall not be deposited in the public project revolving fund and shall be deposited in a separate account of the authority and may be used by the authority to meet administrative costs of the authority.

D. Except as otherwise provided in the New Mexico Finance Authority Act, money in the public project revolving fund is appropriated to the authority to pay the reasonably necessary costs of originating and servicing loans, grants or securities funded by the fund and to make loans or grants and to purchase or sell securities to assist qualified entities in financing public projects in accordance with the New Mexico Finance Authority Act and pursuant to specific authorization by law for each project.

E. Money in the public project revolving fund not needed for immediate disbursement, including money held in reserve, may be deposited with the state treasurer for

short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating in the United States and rated "prime" quality by a national rating service, other investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if money is pledged for or secures payment of bonds issued by the authority.

F. The authority shall establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for public project revolving fund payments, disbursements and balances.

G. Money on deposit in the public project revolving fund may be used to make interim loans for a term not exceeding two years to qualified entities for the purpose of providing interim financing for any project approved or funded by the legislature.

H. Money on deposit in the public project revolving fund may be used to acquire securities or to make loans to qualified entities in connection with the equipment program. As used in this subsection, "equipment program" means the program of the authority designed to finance:

(1) the acquisition of equipment for:

- (a) fire protection;
- (b) law enforcement and protection;
- (c) computer and data processing;
- (d) street and road construction and maintenance;
- (e) emergency medical services;
- (f) solid waste collection, transfer and disposal;
- (g) radio and telecommunications; and
- (h) utility system purposes; and

(2) the acquisition, construction and improvement of fire stations.

I. The amount of securities acquired from or the loan made to a qualified entity at any one time pursuant to Subsection H of this section shall not exceed seven hundred fifty thousand dollars (\$750,000). The authority shall either obtain specific

authorization by law for the projects funded through the equipment program at a legislative session subsequent to the acquisitions of the securities or the making of loans or issue bonds within two years of the date the securities are acquired or within two years of the date on which the loans are made and use the bond proceeds to reimburse the public project revolving fund for the amounts temporarily used to acquire securities or to make loans. The temporarily funded projects under the equipment program are not required to obtain specific authorization by law required of projects permanently funded from the public project revolving fund, as provided in this section and Section 6-21-8 NMSA 1978.

J. Money on deposit in the public project revolving fund may be designated as a reserve for any bonds issued by the authority, including bonds payable from sources other than the public project revolving fund, and the authority may covenant in any bond resolution or trust indenture to maintain and replenish the reserve from money deposited in the public project revolving fund after issuance of bonds by the authority.

K. Money on deposit in the public project revolving fund may be used to purchase bonds issued by the authority, which are payable from any designated source of revenues or collateral. Purchasing and holding the bonds in the public project revolving fund shall not, as a matter of law, result in cancellation or merger of the bonds notwithstanding the fact that the authority as the issuer of the bonds is obligated to make the required debt service payments and the public project revolving fund held by the authority is entitled to receive the required debt service payments."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 217

CHAPTER 26

CHAPTER 26, LAWS 2003

AN ACT

RELATING TO PROPERTY TAXES; CHANGING THE PERIOD FOR CLAIMING PROPERTY TAX EXEMPTIONS; AMENDING A SECTION OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 7-38-17 NMSA 1978 (being Laws 1973, Chapter 258, Section 57, as amended) is amended to read:

"7-38-17. CLAIMING EXEMPTIONS--REQUIREMENTS--PENALTIES.--

A. Subject to the requirements of Subsection E of this section, head-of-family exemptions claimed and allowed in the 1974 or a subsequent tax year, veteran exemptions claimed and allowed in the 1982 or a subsequent tax year or disabled veteran exemptions claimed and allowed in the 2000 or a subsequent tax year need not be claimed for subsequent tax years if there is no change in eligibility for the exemption nor any change in ownership of the property against which the exemption was claimed. Head-of-family and veteran exemptions allowable under this subsection shall be applied automatically by county assessors in the subsequent tax years.

B. Beginning with the 1983 tax year, other exemptions of real property specified under Section 7-36-7 NMSA 1978 for nongovernmental entities shall be claimed in order to be allowed. Once such exemptions are claimed and allowed for a tax year, they need not be claimed for subsequent tax years if there is no change in eligibility. Exemptions allowable under this subsection shall be applied automatically by county assessors in subsequent tax years.

C. An exemption required to be claimed under this section shall be applied for no later than thirty days after the mailing of the county assessors' notices of valuation pursuant to Section 7-38-20 NMSA 1978 in order for it to be allowed for that tax year.

D. A person who has had an exemption applied to a tax year and subsequently becomes ineligible for the exemption because of a change in the person's status or a change in the ownership of the property against which the exemption was applied shall notify the county assessor of the loss of eligibility for the exemption by the last day of February of the tax year immediately following the year in which loss of eligibility occurs.

E. Exemptions may be claimed by filing proof of eligibility for the exemption with the county assessor. The proof shall be in a form prescribed by regulation of the department. Procedures for determining eligibility of claimants for any exemption shall be prescribed by regulation of the department, and these regulations shall include provisions for requiring the New Mexico veterans' service commission to issue certificates of eligibility for veteran exemptions in a form and with the information required by the department. The regulations shall also include verification procedures to assure that veteran exemptions in excess of the amount authorized under Section 7-37-5 NMSA 1978 are not allowed as a result of multiple claiming in more than one county or claiming against more than one property in a single tax year.

F. The department shall consult and cooperate with the New Mexico veterans' service commission in the development and promulgation of regulations under

Subsection E of this section. The commission shall comply with the promulgated regulations. The commission shall collect a fee of five dollars (\$5.00) for the issuance of a duplicate certificate of eligibility to a veteran.

G. A person who violates the provisions of this section by intentionally claiming and receiving the benefit of an exemption to which he is not entitled or who fails to comply with the provisions of Subsection D of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000). A county assessor or his employee who knowingly permits a claimant for an exemption to receive the benefit of an exemption to which he is not entitled is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) and shall also be automatically removed from office or dismissed from employment upon conviction under this subsection."

Section 2. APPLICABILITY.--The provisions of this act apply to property tax years beginning on or after January 1, 2003.

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

HOUSE BILL 300, WITH EMERGENCY

CLAUSE SIGNED MARCH 16, 2003

CHAPTER 27

CHAPTER 27, LAWS 2003

AN ACT

RELATING TO CRIMINAL PROCEDURE; ESTABLISHING PROCEDURES FOR POST-CONVICTION CONSIDERATION OF DNA EVIDENCE; ENACTING A NEW SECTION OF THE CRIMINAL PROCEDURE ACT; REPEALING A SECTION OF THE NMSA 1978; PROVIDING FOR A DELAYED REPEAL.

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

Section 1. A new section of the Criminal Procedure Act is enacted to read:

"PROCEDURES FOR POST-CONVICTION CONSIDERATION OF DNA EVIDENCE--REQUIREMENTS.--

A. A person convicted of a felony, who claims that DNA evidence will establish his innocence, may petition the district court of the judicial district in which he was convicted to order the disclosure, preservation, production and testing of evidence that can be subjected to DNA testing. A copy of the petition shall be served on the district attorney for the judicial district in which the district court is located.

B. As a condition to the district court's acceptance of his petition, the petitioner shall:

(1) submit to DNA testing ordered by the district court; and

(2) authorize the district attorney's use of the DNA test results to investigate all aspects of the case that the petitioner is seeking to reopen.

C. The petitioner shall show, by a preponderance of the evidence, that:

(1) he was convicted of a felony;

(2) evidence exists that can be subjected to DNA testing;

(3) the evidence to be subjected to DNA testing:

(a) has not previously been subjected to DNA testing;

(b) has not previously been subjected to the type of DNA testing that is now being requested; or

(c) was previously subjected to DNA testing, but was tested incorrectly or interpreted incorrectly;

(4) the DNA testing he is requesting will be likely to produce admissible evidence; and

(5) identity was an issue in his case or that if the DNA testing he is requesting had been performed prior to his conviction and the results had been exculpatory, there is a reasonable probability that the petitioner would not have pled guilty or been found guilty.

D. If the petitioner satisfies the requirements set forth in Subsection C of this section, the district court shall appoint counsel for the petitioner, unless the petitioner waives counsel or retains his own counsel.

E. After reviewing a petition, the district court may dismiss the petition, order a response by the district attorney or issue an order for DNA testing.

F. The district court shall order all evidence secured that is related to the petitioner's case and that could be subjected to DNA testing. The evidence shall be preserved during the pendency of the proceeding. The district court may impose appropriate sanctions, including dismissal of the petitioner's conviction or criminal contempt, if the court determines that evidence was intentionally destroyed after issuance of the court's order to secure evidence.

G. The district court shall order DNA testing if the petitioner satisfies the requirements set forth in Subsections B and C of this section.

H. If the results of the DNA testing are exculpatory, the district court may set aside the petitioner's judgment and sentence, may dismiss the charges against the petitioner with prejudice, may grant the petitioner a new trial or may order other appropriate relief.

I. The cost of DNA testing ordered pursuant to this section shall be borne by the state or the petitioner, as the district court may order in the interest of justice. Provided, that a petitioner shall not be denied DNA testing because of his inability to pay for the cost of DNA testing. Testing under this provision shall only be performed by a laboratory that meets the minimum standards of the national DNA index system.

J. The provisions of this section shall not be interpreted to limit:

(1) other circumstances under which a person may obtain DNA testing; or

(2) post-conviction relief a petitioner may seek pursuant to other provisions of law.

K. The petitioner shall have the right to appeal a district court's denial of the requested DNA testing, a district court's final order on a petition or a district court's decision regarding relief for the petitioner. The state shall have the right to appeal any final order issued by the district court. An appeal shall be filed by a party within thirty days to the court of appeals.

L. The state shall preserve all evidence that is secured in relation to an investigation or prosecution of a crime and that could be subjected to DNA testing, for not less than the period of time that a person remains subject to incarceration or supervision in connection with the investigation or prosecution.

M. The state may dispose of evidence before the expiration of the time period set forth in Subsection K of this section if:

(1) no other law, regulation or court order requires that the evidence be preserved;

(2) the evidence must be returned to its rightful owner;

(3) preservation of the evidence is impractical due to the size, bulk or physical characteristics of the evidence; and

(4) the state takes reasonable measures to remove and preserve portions of the evidence sufficient to permit future DNA testing.

N. As used in this section, "DNA" means deoxyribonucleic acid."

Section 2. REPEAL.--Section 31-1A-1 NMSA 1978 (being Laws 2001, Chapter 29, Section 1) is repealed.

Section 3. DELAYED REPEAL.--Section 1 of this act is repealed effective July 1, 2006.

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE FLOOR SUBSTITUTE FOR

SENATE BILL 390, AS AMENDED

CHAPTER 28

CHAPTER 28, LAWS 2003

AN ACT

RELATING TO CREDIT UNIONS; CLARIFYING PROVISIONS FOR OUT-OF-STATE CREDIT UNIONS TO CONDUCT BUSINESS IN NEW MEXICO; MODIFYING LOAN POLICIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE CREDIT UNION ACT.

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

Section 1. 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 those persons related by blood or marriage as well as stepchildren, foster children and adopted children or persons who live in the same residence and maintain a single economic unit;

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 that 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. 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. "primary share account" means a share account that a credit union's bylaws designate as conferring voting rights;

P. "risk assets" means all assets of the credit union except those exempted by the director by regulation;

Q. "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

R. "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 represents an interest in the capital of the credit union upon dissolution or conversion to another type of institution."

Section 2. Section 58-11-6 NMSA 1978 (being Laws 1987, Chapter 311, Section 6) is amended to read:

"58-11-6. RECORDS.--

A. A credit union shall maintain all books, records, accounting systems and procedures in accordance with the rules, regulations and orders the director from time to time establishes or issues. In establishing and issuing such rules, regulations and orders, the director shall consider the relative size of a credit union and its reasonable capability of compliance.

B. A credit union is not liable for destroying records after the expiration of the record retention time prescribed by regulation, except for any records involved in an official investigation or examination about which the credit union has received notice.

C. A photostatic, photographic or xerographic reproduction of any credit union record or any credit union record retrieved in perceptible form from an electronic record maintained pursuant to the provisions of the Uniform Electronic Transactions Act shall be admissible as evidence of transaction with the credit union."

Section 3. Section 58-11-7 NMSA 1978 (being Laws 1987, Chapter 311, Section 7, as amended) is amended to read:

"58-11-7. REPORTS.--

A. Credit unions shall report to the director quarterly on or before January 30, April 30, July 30 and October 30. Reports shall be on forms supplied by the director. The director may require additional reports.

B. A charge of twenty-five dollars (\$25.00) shall be levied for each day a credit union fails to provide a required report, unless that charge is by the director excused for cause."

Section 4. Section 58-11-16 NMSA 1978 (being Laws 1987, Chapter 311, Section 16, as amended) is amended to read:

"58-11-16. OUT-OF-STATE CREDIT UNIONS--APPROVAL TO CONDUCT BUSINESS--DIRECTOR'S DUTIES AND POWERS.--

A. An out-of-state credit union organized pursuant to 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.

B. Before granting approval for an out-of-state credit union to conduct business in New Mexico, the director shall determine that the out-of-state credit union:

(1) is organized pursuant to laws similar to those provided in the Credit Union Act;

(2) is financially solvent;

(3) is examined and supervised by a regulatory agency of the state or territory in which it is organized;

(4) meets share and deposit insurance requirements comparable to those provided in Section 58-11-48 NMSA 1978; and

(5) establishes a need to conduct business in this state to adequately serve its members in this state.

C. The director may:

(1) revoke the approval granted to an out-of-state credit union to conduct business in New Mexico if the director determines that:

(a) the credit union no longer meets the requirements as provided in Subsection B of this section;

(b) the credit union has violated a law of this state or a rule issued by the director;

(c) the credit union has engaged in a pattern of unsafe or unsound credit union practices;

(d) permitting the credit union to continue to conduct business in New Mexico is likely to have a substantial adverse impact on financial, economic or other interests of the residents of the state; or

(e) the credit union is prohibited from conducting business in the state or territory in which it is organized;

(2) cooperate with credit union regulators in other states or territories and share with those regulators pertinent information received pursuant to the provisions of the Credit Union Act;

(3) adopt rules for the periodic examination and investigation of the affairs of an out-of-state credit union conducting business in New Mexico. The costs associated with the examination or investigation shall be borne by the out-of-state credit union that is the subject of the examination or investigation; or

(4) enter into agreements with the regulators of out-of-state credit unions to identify laws and rules applicable to branches of out-of-state credit unions conducting business in New Mexico, or enter into agreements with credit union regulators in other states or territories to identify laws and rules applicable to credit unions organized in New Mexico pursuant to the Credit Union Act that are conducting business in out-of-state locations. The agreements provided for in this section may include, but are not limited to, agreements concerning corporate governance and operational matters, and the rules regarding the manner in which examination, supervision and application processes shall be coordinated with the regulators.

D. An out-of-state credit union conducting business in New Mexico shall:

(1) comply with the provisions of the Credit Union Act, rules issued pursuant to that act and all other applicable state laws; and

(2) designate and maintain an agent for service of process in New Mexico."

Section 5. Section 58-11-18 NMSA 1978 (being Laws 1987, Chapter 311, Section 18, as amended) 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;
- L. sell or offer to sell insurance to the same extent allowed by law to other state chartered lending institutions; and

M. provide services to persons within the credit union's field of membership, including electronic funds transfers and the sale and negotiation of instruments, including money orders, traveler's checks and stored value cards."

Section 6. Section 58-11-27 NMSA 1978 (being Laws 1987, Chapter 311, Section 27, as amended) 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. A supervisory committee shall consist of an odd number of members, as provided in the bylaws, but not less than three or more than seven in number. The bylaws shall specify the length of the terms of the committee members and whether membership of the supervisory committee shall be by annual election or appointment by the board of directors.

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 such person is not a member of the board. A committee may consist of one or more members."

Section 7. 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, 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 such expenses are documented."

Section 8. 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; provided that the board may delegate that authority to the chief executive officer and a committee with the requirement that any exercise of that authority shall be reported to the board at the next monthly board meeting;

(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; provided that the board may delegate that authority, except with regard to an account that the credit union designates as a member's primary share account, to the chief executive officer and a committee, with the requirement that any exercise of that authority shall be reported to the board of directors at the next board meeting;

(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 9. 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 or in such other manner as permitted or required by law 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.

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; and

(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 the

limits set for the total asset size of the credit union as provided in this paragraph, the extension of credit shall be submitted to the board of directors for approval. The board shall require, at a minimum, a completed loan application and a detailed current financial statement of the applicant; provided that submission to the board of directors of an application of an executive officer shall only be required for an applicant serving the credit union as chief executive officer, chief operating officer, chief financial officer or chief lending supervisor. The set limits for the total asset size of the credit union are as follows:

Credit Union Total Assets	Aggregate Credit Exceeding
less than \$5,000,000	\$20,000
\$5,000,000 - \$10,000,000	\$30,000
\$10,000,001 - \$50,000,000	\$40,000
\$50,000,001 or greater	\$50,000.

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 10. Section 58-11-51 NMSA 1978 (being Laws 1987, Chapter 311, Section 51, as amended) is amended to read:

"58-11-51. LIABILITY AND FIDELITY INSURANCE FOR OFFICIALS AND EMPLOYEES.--A credit union shall, unless otherwise specified by the director, purchase and maintain liability and fidelity insurance coverage on behalf of a person who is or was a board member, committee member, executive officer, employee or agent of the credit union or who is or was serving at the request of the credit union as a director, committee member, executive officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against that person and incurred by that person in any such capacity or arising out of that person's status whether or not the credit union would have the power to indemnify that person against such liability; provided, a credit union shall not provide for the indemnification of personnel who are adjudged guilty of or liable for willful misconduct, gross neglect of duty or criminal acts."

Section 11. 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 other

persons within the credit union's field of membership and in connection with 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 12. Section 58-11-56 NMSA 1978 (being Laws 1987, Chapter 311, Section 56, as amended) is amended to read:

"58-11-56. INVESTMENTS.--

A. Funds not required to satisfy member demands for extensions of credit may be invested in:

(1) 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;

(2) securities, obligations or other instruments of this state or any political subdivision of this state;

(3) deposits or other accounts of state or federally chartered financial institutions, the accounts of which are insured by an agency of the United States;

(4) 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;

(5) deposits in, loans to or shares of any federal reserve bank or of any central liquidity facility established under federal law;

(6) shares, stocks, loans or extensions of credit to or other obligations of any organization, corporation or association providing services that are associated with the general purposes of the credit union or that engage 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;

(7) 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;

(8) 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;

(9) common trusts or mutual funds whose investment portfolios consist of mortgages, securities and obligations and bonds of the federal national mortgage association, federal home loan mortgage corporation, government national mortgage association and other government-sponsored enterprises;

(10) other investments, or in amounts in excess of the thresholds listed in this section, as approved by the director in written application; and

(11) 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.

B. Credit unions with minimum undivided earnings of one million dollars (\$1,000,000) and with capital in excess of seven and one-half percent after required reserves may also invest funds not required to satisfy member demands for extensions of credit. The aggregate of a credit union's investments as provided in this subsection shall not exceed ten percent of the credit union's undivided earnings. Such investments may only be in or through:

(1) common trusts or mutual funds whose investment portfolios consist of the bonds or other obligations of insured financial institutions organized pursuant to the laws of another state or the United States, or corporations organized in any state, the District of Columbia, the commonwealth of Puerto Rico or the territories organized by congress; provided that the investment portfolios are representative of a recognized broadly traded bond index, as defined in the credit union's board-approved investment policy, and provided that the portfolios shall be limited to such bonds and other obligations having maturities of less than fifteen years with an average weighted life not to exceed seven years and being rated among the three highest ratings established by one or more national rating services; and

(2) common trusts or mutual funds whose investment portfolios consist of the stock of corporations organized in any state, the District of Columbia, the commonwealth of Puerto Rico or the territories organized by congress, provided that the investment portfolios of such common trusts or mutual funds are representative of a recognized broadly traded stock index as defined in the credit union's board-approved investment policy."

Section 13. Section 58-11-60 NMSA 1978 (being Laws 1987, Chapter 311, Section 60) is amended to read:

"58-11-60. CONVERSION.--

A. A credit union organized under the laws of this state may be converted to a credit union organized under the laws of any other state or under the laws of the United States, subject to regulations issued by the director.

B. A credit union organized under the laws of the United States or of any other state may convert to a credit union organized under the laws of this state. To effect such a conversion, a credit union shall comply with all of the requirements of the jurisdiction under which it was originally organized, the requirements provided for in the Credit Union Act and other requirements determined by the director, and file proof of such compliance with the director.

C. A bank, savings and loan company or other financial institution that is not a credit union may be converted to a credit union organized pursuant to the Credit Union Act. To effect such a conversion, the converting financial institution shall file proof of compliance with all of the requirements of the jurisdiction under which it was originally organized, the provisions of the Credit Union Act and other requirements determined by the director.

D. A credit union organized pursuant to the Credit Union Act may be converted to a bank, savings and loan company or other financial institution. To effect such a conversion, the converting credit union shall comply with all the requirements of the jurisdiction in which it will be organized, including any rules issued by the appropriate regulating agency and other requirements determined by the director."

Section 14. A new section of the Credit Union Act is enacted to read:

"CAPITALIZATION AND RESERVES.--

A. A credit union shall maintain a well-capitalized status as determined by the director.

B. A credit union shall set aside and maintain such reserves as may be required by the insurer of its share accounts and deposit accounts."

Section 15. REPEAL.--Sections 58-11-57 and 58-11-64

NMSA 1978 (being Laws 1987, Chapter 311, Sections 57 and 64, as amended) are repealed.

SENATE BILL 546, AS AMENDED

CHAPTER 29

CHAPTER 29, LAWS 2003

AN ACT

RELATING TO PROPERTY TAXATION; IMPLEMENTING THE EXPANSION OF THE DISABLED VETERAN EXEMPTION REQUIRED BY ARTICLE 8, SECTION 15 OF THE CONSTITUTION OF NEW MEXICO; DECLARING AN EMERGENCY.

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

Section 1. Section 7-37-5.1 NMSA 1978 (being Laws 2000, Chapter 92, Section 1 and Laws 2000, Chapter 94, Section 1) is amended to read:

"7-37-5.1. DISABLED VETERAN EXEMPTION.--

A. As used in this section:

(1) "disabled veteran" means an individual who:

(a) has been honorably discharged from membership in the armed forces of the United States or has received a discharge certificate from a branch of the armed forces of the United States for civilian service recognized pursuant to federal law as service in the armed forces of the United States; and

(b) has been determined pursuant to federal law to have a one hundred percent permanent and total service-connected disability; and

(2) "honorably discharged" means discharged from the armed forces pursuant to a discharge other than a dishonorable or bad conduct discharge.

B. The property of a disabled veteran, including joint or community property of the veteran and the veteran's spouse, is exempt from property taxation if it is occupied by the disabled veteran as his principal place of residence. Property held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a disabled veteran or the veteran's surviving spouse is also exempt from property taxation if the property otherwise meets the requirements for exemption in this subsection or Subsection C of this section.

C. The property of the surviving spouse of a disabled veteran is exempt from property taxation if:

(1) the surviving spouse and the disabled veteran were married at the time of the disabled veteran's death;

(2) the property was exempt prior to the disabled veteran's death pursuant to Subsection B of this section; and

(3) the surviving spouse continues to occupy the property continuously after the disabled veteran's death as the spouse's principal place of residence.

D. The exemption provided by this section may be referred to as the "disabled veteran exemption".

E. The disabled veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and the rules of the department.

F. The New Mexico veterans' service commission shall assist the department and the county assessors in determining which veterans qualify for the disabled veteran exemption."

Section 2. APPLICABILITY.--The provisions of this act apply to the 2003 and subsequent property tax years.

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

HOUSE BILL 71, WITH EMERGENCY CLAUSE

SIGNED MARCH 18, 2003

CHAPTER 30

CHAPTER 30, LAWS 2003

AN ACT

RELATING TO HIGHER EDUCATION; ENACTING THE WORKFORCE TRAINING ACT; CREATING THE WORKFORCE TRAINING PROGRAM; PROVIDING FOR CUSTOMIZED TRAINING AT COMMUNITY COLLEGES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Workforce Training Act".

Section 2. PURPOSES.--The purposes of the Workforce Training Act are to:

A. provide funding for non-credit customized training at community colleges;

B. establish the workforce training program to deliver customized training for members of the workforce who require specialized training to obtain or advance in employment with small and large businesses in New Mexico;

C. provide a statewide program of customized training that supplements the state's workforce development efforts and offers opportunities for state residents to obtain skills needed to provide a well-trained workforce for employers in New Mexico; and

D. enable community colleges to better respond to the needs of their communities and to participate in attracting, retaining and recruiting employers that can provide employment for trained workers in the community.

Section 3. DEFINITIONS.--As used in the Workforce Training Act:

A. "commission" means the commission on higher education;

B. "community college" means a public post-secondary educational institution located in New Mexico offering technical or vocational training or two-year degrees;

C. "customized training" means vocational or technical training:

(1) offered by a community college;

(2) that provides specialized employee training for a particular business or industry;

(3) for which a student who successfully completes the training does not receive college credit; and

(4) that enhances workforce development in the state;

D. "tier-2 undergraduate funding level" means tier 2 of the higher education funding formula developed by the commission; and

E. "workforce training program" means the program created by the Workforce Training Act to provide customized training at community colleges in New Mexico.

Section 4. DISTRIBUTION OF FUNDS.--

A. Beginning in the budget cycle following the effective date of the Workforce Training Act, the commission shall include in its annual budget an amount calculated to be necessary to implement a workforce training program in the state.

B. During the first year of funding, a base number of students shall be projected by the commission for each community college offering customized training pursuant to the Workforce Training Act after consultation with each community college. To determine the funding to be distributed to each community college, the total appropriation made by the legislature to implement that act shall be multiplied by a fraction, the numerator of which is the projected number of student credit hours in customized training at the community college receiving the funding and the denominator of which is the total projected number of student credit hours in customized training at all of the community colleges participating in the workforce training program.

C. Following the first year of implementation of the Workforce Training Act, the commission shall determine the number of students enrolled in customized training at each community college in the state according to the most recent year for which data is available.

D. Using a predetermined credit-hour equivalent of courses normally considered under the tier-2 undergraduate funding level, the amount to be budgeted for the program shall be developed and included in the commission budget for each subsequent fiscal year.

E. Beginning in the second year of implementation of the Workforce Training Act, the funding to be distributed to each community college shall be determined by multiplying the total appropriation made by the legislature to implement the Workforce Training Act by a fraction, the numerator of which is the number of student credit hours in customized training at that community college in the prior year and the denominator of which is the total number of student credit hours in customized training in the prior year at all of the community colleges participating in the workforce training program.

F. A community college that previously was not included in the distribution but seeks to participate in the workforce training program for the first time shall negotiate with the commission to establish the base level of funding for the community college based on the projected number of students expected to enroll in customized training and shall be added to the formula to determine the budget expansion to be requested.

Section 5. ELIGIBLE FUNDING RECIPIENTS.--

A. To be eligible to receive funding pursuant to the Workforce Training Act, a community college shall provide customized training for at least one business each year.

B. To remain eligible to receive funding to participate in the workforce training program following the first year in which customized training is offered, a community college shall:

(1) increase the number of businesses receiving customized training in each succeeding year by at least one business that did not receive customized training in the prior year; or

(2) increase the total number of employees enrolled in customized training for each succeeding year.

C. To qualify as a business that may participate in the customized training opportunities offered at a community college:

(1) a business shall be located in New Mexico;

(2) may be either a new or an established business;

(3) shall provide full-time job opportunities for the successful participants of the workforce training program; and

(4) shall pay more than minimum wage to successful participants of the workforce training program.

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 160, AS AMENDED

CHAPTER 31

CHAPTER 31, LAWS 2003

AN ACT

RELATING TO DRIVER'S LICENSES; PROVIDING THAT AN INDIVIDUAL TAX IDENTIFICATION NUMBER MAY BE USED FOR APPLICATIONS FOR DRIVER'S LICENSES.

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

Section 1. Section 66-5-9 NMSA 1978 (being Laws 1978, Chapter 35, Section 231, as amended) is amended to read:

"66-5-9. APPLICATION FOR LICENSE, TEMPORARY LICENSE, PROVISIONAL LICENSE OR INSTRUCTION PERMIT.--

A. An application for an instruction permit, provisional license or driver's license shall be made upon a form furnished by the department. An application shall be accompanied by the proper fee. For permits, provisional licenses or driver's licenses other than those issued pursuant to the New Mexico Commercial Driver's License Act, submission of a complete application with payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of six months from the date of application.

B. An application shall contain the full name, social security number or individual tax identification number, date of birth, sex and New Mexico residence address of the applicant and briefly describe the applicant and indicate whether the applicant has previously been licensed as a driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal. For foreign nationals applying for driver's licenses the secretary shall accept the individual taxpayer identification number as a substitute for a social security number regardless of immigration status. The secretary is authorized to establish by regulation other documents that may be accepted as a substitute for a social security number or an individual tax identification number.

C. An applicant shall indicate whether he has been convicted of driving while under the influence of intoxicating liquor or drugs in this state or in any other jurisdiction. Failure to disclose any such conviction prevents the issuance of a driver's license, provisional license, temporary license or instruction permit for a period of one year if the failure to disclose is discovered by the department prior to issuance. If the nondisclosure is discovered by the department subsequent to issuance, the department shall revoke the driver's license, provisional license, temporary license or instruction permit for a period of one year. Intentional and willful failure to disclose, as required in this subsection, is a misdemeanor.

D. An applicant less than eighteen years of age who is making an application to be granted his first New Mexico driver's license shall submit evidence that he has:

(1) successfully completed a driver education course that included a DWI prevention and education program approved by the bureau or offered by a public school. The bureau may accept verification of driver education course completion from another state if the driver education course substantially meets the requirements of the bureau for a course offered in New Mexico;

(2) had a provisional license for the twelve-month period immediately preceding the date of the application for the driver's license;

(3) complied with restrictions on that license;

(4) not been convicted of a traffic violation committed during the ninety days prior to applying for a driver's license;

(5) not been cited for a traffic violation that is pending at the time of his application; and

(6) not been adjudicated for an offense involving the use of alcohol or drugs during the twelve-month period immediately preceding the date of the application for the driver's license and that there are no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of his application.

E. An applicant eighteen years of age and over, but less than twenty-five years of age, who is making an application to be granted his first New Mexico driver's license shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

F. An applicant twenty-five years of age and over who has been convicted of driving under the influence of intoxicating liquor or drugs, and who is making an application to be granted his first New Mexico driver's license, shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

G. Whenever application is received from a person previously licensed in another jurisdiction, the department may request a copy of the driver's record from the other jurisdiction. When received, the driver's record may become a part of the driver's record in this state with the same effect as though entered on the driver's record in this state in the original instance.

H. Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

I. This section does not apply to driver's licenses issued pursuant to the New Mexico Commercial Driver's License Act."

HOUSE BILL 173, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 32

CHAPTER 32, LAWS 2003

AN ACT

MAKING AN APPROPRIATION FOR HIGH SCHOOL CAREER CENTERS.

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

Section 1. APPROPRIATION.--One million five hundred fifty thousand dollars (\$1,550,000) is appropriated from the Reed Act distribution fund, consisting of funds made available to the state of New Mexico on March 13, 2002 pursuant to Section 209 of the federal Temporary Extended Unemployment Compensation Act of 2002, to the labor department for expenditure in fiscal years 2004 through 2007 to support high school career centers in New Mexico. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the Reed Act distribution fund.

SENATE BILL 416, AS AMENDED

CHAPTER 33

CHAPTER 33, LAWS 2003

AN ACT

RELATING TO LEGISLATORS; CHANGING THE ETHICS CONTINUING EDUCATION REQUIREMENT FOR LEGISLATORS FROM A MINIMUM OF ONE HOUR ANNUALLY TO TWO HOURS BIENNIALLY.

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

Section 1. Section 10-16-11 NMSA 1978 (being Laws 1967, Chapter 306, Section 11, as amended) is amended to read:

"10-16-11. CODES OF CONDUCT.--

A. By January 1, 1994, each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to his control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the secretary of state and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training

biennially."

SENATE BILL 523

CHAPTER 34

CHAPTER 34, LAWS 2003

AN ACT

RELATING TO MEDICAID; DIRECTING THE HUMAN SERVICES DEPARTMENT TO ESTABLISH A WAIVER PROGRAM TO PROVIDE PRESCRIPTION DRUGS FOR CERTAIN SENIORS AND DISABLED PERSONS.

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

Section 1. PRESCRIPTION DRUG WAIVER PROGRAM--PURPOSE--ELIGIBILITY.--Subject to the availability of state funds and consistent with the federal Social Security Act, the human services department shall create a medicaid waiver program and may by regulation provide prescription drugs to persons whose incomes are less than one hundred eighty-five percent of the federal poverty level and who:

A. are sixty-five years of age or older; or

B. have been determined to be disabled under the criteria established under the federal social security administration's disability determination rules as applied by the department.

SENATE BILL 391, AS AMENDED

CHAPTER 35

CHAPTER 35, LAWS 2003

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING FOR REIMBURSEMENT BY AN OFFENDER TO A VICTIM OF THE OFFENSE OF MAKING A BOMB SCARE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 30-20-16 NMSA 1978 (being Laws 1975, Chapter 285, Section 1, as amended) is amended to read:

"30-20-16. BOMB SCARES UNLAWFUL.--

A. Making a bomb scare consists of falsely and maliciously stating to another person that a bomb or other explosive has been placed in such a position that property

or persons are likely to be injured or destroyed.

B. Whoever commits making a bomb scare is guilty of a fourth degree felony.

C. A court may order a person convicted for the offense of making a bomb scare to reimburse the victim of the offense for economic harm caused by that offense.

D. As used in this section, "economic harm" means all direct, incidental and consequential financial harm suffered by a victim of the offense of making a bomb scare. "Economic harm" includes:

(1) wages, salaries or other compensation lost as a result of the commission of the offense of making

a bomb scare;

(2) the cost of all wages, salaries or other compensation paid to employees for time that those employees are prevented from working as a result of the commission of the offense of making a bomb scare; and

(3) overhead costs incurred for the period of time that a business is shut down as a result of the commission of the offense of making a bomb scare.

E. This section shall not be construed to limit a court's authority to order restitution to a victim of the offense of making a bomb scare pursuant to other provisions of law."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 31

CHAPTER 36

CHAPTER 36, LAWS 2003

AN ACT

RELATING TO REAL ESTATE; CLARIFYING THE RESPONSIBILITIES OF REAL ESTATE BROKERS AND LICENSEES TO CLIENTS AND CUSTOMERS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 61-29-2 NMSA 1978 (being Laws 1999, Chapter 127, Section 1) is amended to read:

"61-29-2. DEFINITIONS AND EXCEPTIONS.--

A. As used in Chapter 61, Article 29 NMSA 1978:

(1) "agency relationship" or "brokerage relationship" means the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission;

(2) "broker" or "qualifying broker" means a person who for compensation or other consideration from another:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) leases, rents or auctions or offers to lease, rent or auction real estate;

(c) advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(d) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which he undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for that purpose or for the purpose of referral of information concerning real estate to brokers;

(3) "brokerage" means a licensed qualifying broker, the licensed real estate business represented by the broker and its affiliated licensees;

(4) "client" means a buyer, seller, landlord or tenant who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission;

(5) "commission" means the New Mexico real estate commission;

(6) "customer" means a buyer, seller, landlord or tenant who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission;

(7) "license" means a real estate broker's license or a real estate salesperson's license issued by the commission;

(8) "licensee" means a person holding a valid real estate license subject to the jurisdiction of the commission;

(9) "real estate" means land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest, whether tangible or intangible; and

(10) "real estate salesperson" means a person who for compensation or other valuable consideration is associated with or engaged under contract by a broker to participate in an activity described in Subparagraphs (a) through (d) of Paragraph (2) of this subsection or to carry on the broker's business as a whole or partial vocation.

B. A single act of a person in performing or attempting to perform an activity described in Subparagraphs (a) through (d) of Paragraph (2) of Subsection A of this section makes the person a broker. A single act of a person in performing or attempting to perform an activity described in Paragraph (10) of Subsection A of this section makes the person a real estate salesperson.

C. The provisions of Chapter 61, Article 29 NMSA 1978 do not apply to:

(1) a person who as owner or lessor performs any of the activities included in this section with reference to property owned or leased by him, the employees of the owner or lessor or the employees of a broker acting on behalf of the owner or lessor, with respect to the property owned or leased, if the acts are performed in the regular course of or incident to the management of the property and the investments, except when the sale or offering for sale or the lease or offering for lease of the property constitutes a subdivision containing one hundred or more parcels;

(2) isolated or sporadic transactions not exceeding two transactions annually in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner authorizing the person to finally consummate and to perform under any contract the sale, leasing or exchange of real estate on behalf of the owner; and the owner or attorney-in-fact has not used a power of attorney for the purpose of evading the provisions of Chapter 61, Article 29 NMSA 1978;

(3) transactions in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner related to the attorney-in-fact within the fourth degree of consanguinity or closer, authorizing the person to finally consummate and to perform under any contract for the sale, leasing or exchange of real estate on behalf of the owner;

(4) the services rendered by an attorney at law in the performance of his duties as an attorney at law;

(5) a person acting in the capacity of a receiver, trustee in bankruptcy, administrator or executor, a person selling real estate pursuant to an order of any court or a trustee acting under a trust agreement, deed of trust or will or the regular salaried employee of a trustee;

(6) the activities of a salaried employee of a governmental agency acting within the scope of his employment; or

(7) persons who deal exclusively in mineral leases or the sale or purchase of mineral rights or royalties in any case in which the fee to the land or the surface rights are in no way involved in the transaction."

Section 2. Section 61-29-10.1 NMSA 1978 (being Laws 1999, Chapter 127, Section 2) is amended to read:

"61-29-10.1. BROKERAGE RELATIONSHIPS--CREATION.--

A. For all regulated real estate transactions first executed on or after January 1, 2000, no agency relationship between a buyer, seller, landlord or tenant and a brokerage shall exist unless the buyer, seller, landlord or tenant and the brokerage agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant or licensee, or created orally or by implication.

B. A brokerage may provide real estate services to a client pursuant to an express written agreement that does not create an agency relationship and no agency duties will be imposed on the brokerage.

C. A brokerage may provide real estate services to a customer without entering into an express written agreement and without creating an agency relationship and no agency duties will be imposed on the brokerage.

D. The commission shall promulgate rules governing the rights of clients or customers and the rights, responsibilities and duties of a brokerage in those brokerage relationships that are subject to the jurisdiction of the commission."

Section 3. Section 61-29-10.2 NMSA 1978 (being Laws 1999, Chapter 127, Section 3) is amended to read:

"61-29-10.2. LICENSEE'S DUTIES--DISCLOSURE.--

A. A licensee shall give to a prospective buyer, seller, landlord or tenant, at the time when the parties enter into an express written agreement, a list of the licensee's duties that are in accordance with requirements established by the commission.

B. Licensees shall perform all duties that are established for licensees by the commission."

Section 4. REPEAL.--Section 61-29-10.3 NMSA 1978 (being Laws 1999, Chapter 127, Section 4, as amended) is repealed.

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2004.

SENATE BILL 45

CHAPTER 37

CHAPTER 37, LAWS 2003

AN ACT

RELATING TO EDUCATION; REQUIRING THAT HIGH SCHOOL CURRICULA AND END-OF-COURSE TESTS BE ALIGNED WITH THE STATE'S TWO- AND FOUR-YEAR PUBLIC EDUCATIONAL INSTITUTIONS.

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

Section 1. A new section of the Public School Code is enacted to read:

"HIGH SCHOOL CURRICULA AND END-OF-COURSE TESTS--ALIGNMENT.-- High school curricula and end-of-course tests shall be aligned with the placement tests administered by two- and four-year public educational institutions in New Mexico.

The department of education shall collaborate with the commission on higher education in aligning high school curricula and end-of-course tests with the placement tests."

SENATE BILL 62

CHAPTER 38

CHAPTER 38, LAWS 2003

AN ACT

RELATING TO COURTS; REPLACING THE SKELETON TRANSCRIPT FEE WITH A DOCKET AND DISMISS FEE IN THE COURT OF APPEALS AND SUPREME COURT.

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

Section 1. Section 34-2-5 NMSA 1978 (being Laws 1933, Chapter 81, Section 1, as amended) is amended to read:

"34-2-5. FEES--COLLECTION BY SUPREME COURT CLERK.--The clerk of the supreme court shall collect the following fees:

A. in all cases docketed in the court, except those in which statutory exemption exists and those in which the court on showing of poverty may, by order, waive the fee, one hundred twenty-five dollars (\$125), twenty-five dollars (\$25.00) of which shall be deposited in the court automation fund and ninety-six dollars (\$96.00) of which shall be deposited in the court facilities fund; provided that in cases in which a motion to docket and dismiss an appeal is filed for failure to file a statement of the issues, the fee shall be twenty dollars (\$20.00), ten dollars (\$10.00) of which shall be deposited in the court automation fund and ten dollars (\$10.00) of which shall be deposited in the court facilities fund;

B. for one copy of files or a record, ten cents (\$.10) per folio and for additional copies ordered at the same time five cents (\$.05) per folio;

C. for comparing copies of files or records tendered to him, five cents (\$.05) per folio; and

D. for each certificate, one dollar (\$1.00)."

Section 2. Section 34-5-6 NMSA 1978 (being Laws 1966, Chapter 28, Section 6, as amended) is amended to read:

"34-5-6. COURT OF APPEALS--FEES AND COSTS.--

A. The clerk of the court of appeals shall collect the following fees:

docket fee, twenty-five dollars (\$25.00) of

which shall be deposited in the court automation fund
and one hundred dollars (\$100) of which shall be
deposited in the court facilities fund \$125.00

docket fee for cases in which a motion to docket and
dismiss the appeal is filed for failure to file a
docketing statement, ten dollars (\$10.00) of which

shall be deposited in the court automation fund and ten dollars (\$10.00) of which shall be deposited in the court facilities fund 20.00

single copy of records, per typewritten folio10

each additional copy of records ordered at same time, per typewritten folio . . .05

copies of records reproduced by photographic process, per page10

comparing copies of records tendered to him, per folio05

each certificate 1.00.

B. No fees or costs shall be required in proceedings in forma pauperis, from state officers acting in their official capacity or in any other case where a statutory exemption exists.

C. Except as otherwise specifically provided by law, the clerk of the court of appeals shall pay all fees and costs to the state treasurer for credit to the state general fund."

SENATE BILL 106, AS AMENDED

CHAPTER 39

CHAPTER 39, LAWS 2003

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; MAKING TECHNICAL AMENDMENTS TO THE EDUCATIONAL RETIREMENT ACT; CLARIFYING THE DEFINITION OF SALARY; SPECIFYING HOW MEETINGS MAY BE CANCELED OR RESCHEDULED; ALLOWING THE EDUCATIONAL RETIREMENT BOARD TO DETERMINE THE INTEREST RATE PAID ON MEMBER AND BENEFICIARY REFUNDS; ALLOWING THE BOARD TO PROVIDE BY RULE FOR EXCEPTIONS TO THE PROHIBITION ON WORK DURING RETIREMENT; PROVIDING FOR AN EXCEPTION TO MANDATORY RETIREMENT; REQUIRING THAT A PERSON MUST BE EMPLOYED TO PURCHASE ALLOWED SERVICE CREDIT; EXCEPTING PERSONS WITH PERMANENT DISABILITIES FROM ANNUAL RE-EXAMINATION; LIMITING ASSIGNABILITY OF CONTRIBUTIONS OR BENEFITS.

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

Section 1. Section 22-11-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 126, as amended) is amended to read:

"22-11-2. DEFINITIONS.--As used in the Educational Retirement Act:

A. "member" means an employee, except for a participant or a retired member, coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed as a teaching, nursing or administrative employee of a state educational institution, except for:

(a) a participant; or

(b) all employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a person regularly employed as a

teaching, nursing or administrative employee of a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978, except for a participant;

(3) a person regularly employed as a teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act, except for a participant;

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the New Mexico girls' school, the Los Lunas medical center or a school district or as a certified school instructor of a state institution or agency providing an educational program and holding a standard or substandard certificate issued by the state board, except for a participant;

(5) a person regularly employed by the department of education or the board holding a standard or substandard certificate issued by the state board at the time of commencement of such employment;

(6) a member classified as a regular member in accordance with the rules of the board;

(7) a person regularly employed by the New Mexico activities association holding a standard certificate issued by the state board at the time of commencement of such employment; or

(8) a person regularly employed by a regional education cooperative holding a standard certificate issued by the state board at the time of commencement of such employment;

C. "provisional member" means a person not eligible to be a regular member but who is employed by a local administrative unit designated in Subsection B of this section; provided, however, that employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico are not provisional members;

D. "local administrative unit" means an employing agency however constituted that is directly responsible for the payment of compensation for the employment of members or participants;

E. "beneficiary" means a person having an insurable interest in the life of a member or a participant designated by written instrument duly executed by the member or participant and filed with the director to receive a benefit pursuant to the Educational Retirement Act that may be received by someone other than the member or participant;

F. "employment" means employment by a local administrative unit that qualifies a person to be a member or participant;

G. "service employment" means employment that qualifies a person to be a regular member;

H. "provisional service employment" means employment that qualifies a person to be a provisional member;

I. "prior employment" means employment performed prior to the effective date of the Educational Retirement Act that would be service employment or provisional service employment if performed thereafter;

J. "service credit" means that period of time with which a member is accredited for the purpose of determining his eligibility for and computation of retirement or disability benefits;

K. "earned service credit" means that period of time during which a member was engaged in employment or prior employment with which he is accredited for the purpose of determining his eligibility for retirement or disability benefits;

L. "allowed service credit" means that period of time during which a member has performed certain nonservice employment with which he may be accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;

M. "retirement benefit" means an annuity paid monthly to members whose employment has been terminated by reason of their age;

N. "disability benefit" means an annuity paid monthly to members whose employment has been terminated by reason of a disability;

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement director;

R. "medical authority" means a medical doctor within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either designated or employed by the board to examine and report on the physical condition of applicants for or recipients of disability benefits;

S. "actuary" means a person trained and regularly engaged in the occupation of calculating present and projected monetary assets and liabilities under annuity or insurance programs;

T. "actuarial equivalent" means a sum paid as a current or deferred benefit that is equal in value to a regular benefit, computed upon the basis of interest rates and mortality tables;

U. "contributory employment" means employment for which contributions have been made by both a member and a local administrative unit pursuant to the Educational Retirement Act;

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university, western New Mexico university, Albuquerque technical-vocational institute, Clovis community college, Luna vocational-technical institute, Mesa technical college, New Mexico junior college, northern New Mexico state school, San Juan college and Santa Fe community college;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who first becomes employed with such an educational institution on or after July 1, 1991, or a person regularly employed as a faculty or professional employee of the Albuquerque technical-vocational institute, Clovis community college, Luna vocational-technical institute, Mesa technical college, New Mexico junior college, northern New Mexico state school, San Juan college or

Santa Fe community college who is first employed by the institution on or after July 1, 1999 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

(2) a person regularly employed who performs research or other services pursuant to a contract between a qualifying state educational institution and the United States government or any of its agencies who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan, provided that the research or other services are performed outside the state;

X. "salary" means the compensation or wages paid to a member or participant by any local administrative unit for services rendered. "Salary" includes payments made for annual or sick leave and payments for additional service provided to related activities, but does not include payments for sick leave not taken unless the payment for the unused sick leave is made through continuation of the member on the regular payroll for the period represented by that payment and does not include allowances or reimbursements for travel, housing, food, equipment or similar items;

Y. "alternative retirement plan" means the retirement plan provided for in Sections 22-11-47 through 22-11-52 NMSA 1978; and

Z. "retired member" means a person whose employment has been terminated by reason of age and who is receiving or is eligible to receive retirement benefits."

Section 2. Section 22-11-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 128) is amended to read:

"22-11-4. BOARD--REGULAR AND SPECIAL MEETINGS.--

A. The board shall hold regular meetings four times each year and may, by its bylaws, provide for additional regular meetings. Prior to each regular meeting, written notice shall be given to each member of the board specifying the time and place of the regular meeting.

B. Special meetings of the board may be called by the chairman or by any three members of the board. Written notice of the special meeting shall be sent to each member of the board at least three days in advance of the special meeting.

C. If not in violation of Subsection A or B of this section, the rules of the board or the Open Meetings Act, the chairman or any of three members of the board may cancel or reschedule a meeting."

Section 3. Section 22-11-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 133) is amended to read:

"22-11-9. ACTUARY--FEES.--

A. The board shall employ the services of an actuary. The actuary shall prepare a table of actuarial equivalents for use of the board and the director in computing the value of advanced, deferred or optional payment of benefits pursuant to the Educational Retirement Act. The actuary shall also study the financial operations of the Educational Retirement Act and shall make written reports thereon to the board.

B. The board shall pay the actuary a reasonable fee for his professional services.

C. Unless otherwise required by the governmental accounting standards board of the American institute of certified public accountants, an actuarial report shall be conducted at least once every three years."

Section 4. Section 22-11-15 NMSA 1978 (being Laws 1967, Chapter 16, Section 139, as amended) is amended to read:

"22-11-15. FUND--REFUNDS--PAYMENTS.--

A. After filing written demand with the director, a member is entitled to a refund of the total amount of the member's contributions plus interest at a rate set by the board, reduced by the sum of any disability benefits previously received by the member, if:

(1) the member terminates employment for reasons other than by retirement, disability or death;

(2) the member has exempted himself from the Educational Retirement Act; or

(3) the member was not reemployed following a period of disability during which he received disability benefits.

B. The director may, at the request of a member, make payment on behalf of the member for any or all of the refund to an individual retirement account or a qualified retirement plan that accepts rollovers.

C. If the amount of a deceased member's contribution or residual contribution does not exceed the sum of one thousand dollars (\$1,000) and no written claim is made to the board for it within one year from the date of the member's death, by his surviving beneficiary or the member's estate, payment thereof may be made to the named beneficiary or, if none is named, to the person the board determines to be entitled to the contribution under the laws of New Mexico. Any payment made by the board pursuant to this subsection shall be a bar to a claim by any other person.

D. The interest provided for in Subsection A of this section shall apply only to contributions paid to the fund after July 1, 1971 and on deposit in the fund for a period of at least one fiscal year; provided that no such interest shall be allowed on refunds of contributions that were paid into the fund prior to July 1, 1971."

Section 5. Section 22-11-26 NMSA 1978 (being Laws 1967, Chapter 16, Section 149, as amended) is amended to read:

"22-11-26. DEATH DURING REEMPLOYMENT.--If a member dies during a period of reemployment following retirement pursuant to the Educational Retirement Act, the benefits to be paid shall be determined according to the following:

A. if the member did not elect to exercise Option B or C pursuant to Subsection A of Section 22-11-29 NMSA 1978 at the time of first retirement, the member's beneficiary or estate shall receive an amount equal to the sum of the member's contributions, including contributions made by the member during the period of last reemployment, plus accumulated interest at the rate set by the board, less the total benefits received prior to the last reemployment; or

B. if a retirement benefit has been paid to the member pursuant to either Option B or Option C of Subsection A of Section 22-11-29 NMSA 1978 prior to reemployment, the reemployed member shall be considered as retiring on the day preceding the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall be commenced effective on the date of death in accordance with the terms of the option elected."

Section 6. Section 22-11-27 NMSA 1978 (being Laws 1967, Chapter 16, Section 150, as amended) is amended to read:

"22-11-27. DEFERRED RETIREMENT--RESTRICTION.--

A. A member eligible for retirement may continue in employment and shall continue to pay contributions as provided by the Educational Retirement Act.

B. A member may terminate his employment and retire at any time after his age and his earned service-credit equal the sum of seventy-five if the contributions he has made are left in the fund.

C. A member having five years or more of earned service-credit may terminate his employment and retire at any time after reaching the age of sixty-five years if the contributions he has made are left in the fund.

D. No member shall be on a retirement status while engaged in employment unless the employment falls within exceptions established by statute or rule of the board."

Section 7. Section 22-11-29 NMSA 1978 (being Laws 1967, Chapter 16, Section 152, as amended) is amended to read:

"22-11-29. RETIREMENT BENEFIT OPTIONS.--

A. Upon retirement pursuant to the Educational Retirement Act, a member may elect, and such election shall be irrevocable, to receive the actuarial equivalent of his retirement benefit, as provided in Section 22-11-30 NMSA 1978, to be effective on his retirement in any one of the following optional forms:

(1) OPTION B. A reduced annuity payable during the member's life with provision that upon the member's death the same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option; or

(2) OPTION C. A reduced annuity payable during the member's life with provision that upon the member's death one-half of this same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option.

B. In the case of Options B and C of Subsection A of this section, the actuarial equivalent of the member's retirement benefit shall be computed on the basis of the lives of both the member and the beneficiary.

C. In the event that the named beneficiary of a retired member who elected Option B or C of Subsection A of this section at the time of retirement predeceases the retired member, the annuity of the retired member shall be adjusted by adding an amount equal to the amount by which the annuity of the retired member was reduced at retirement as a result of the election of Option B or C. The adjustment authorized in this subsection shall be made as follows:

(1) beginning on the first month following the month in which the named beneficiary of a retiree dies applicable to an annuity received by a retiree who retires after June 30, 1987; or

(2) beginning on July 1, 1987 applicable to an annuity received by a retiree who retired prior to July 1, 1987 and otherwise qualifies for the adjustment; provided, however, no adjustment shall be made retroactively.

D. In the event of the death of the member who has not retired and who has completed at least five years' earned service credit, the member shall be considered as retiring on the first day of the month following the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall, except as provided in Subsection G of this section, be commenced effective on the first day of such month in accordance with the terms of Option B of Subsection A of this section. In lieu of the provisions of Option B, the surviving beneficiary may elect to receive payment

of all the contributions made by the member, plus interest at the rate set by the board reduced by the sum of any disability benefits previously received by the member, or the surviving beneficiary may choose to defer receipt of the survivor's benefit to whatever age the beneficiary chooses up to the time the member would have attained age sixty. If the benefit is thus deferred, it shall be calculated as though the member had retired on the first day of the month in which the beneficiary elects to receive the benefit. In the event of the death of the beneficiary after the death of the member and prior to the date on which the beneficiary has elected to receive the beneficiary's benefit, the estate of the beneficiary shall be entitled to a refund of the member's contributions plus interest at the rate earned by the fund during the preceding fiscal year, reduced by the sum of any disability benefits previously received by the member.

E. In the case of death of a retired member who did not elect either Option B or C of Subsection A of this section and before the benefits paid to him have equaled the sum of his accumulated contributions to the fund plus accumulated interest at the rate set by the board, the balance shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the estate of the member.

F. No benefit shall be paid pursuant to this section if the member's contributions have been refunded pursuant to Section 22-11-15 NMSA 1978.

G. In the case of death of a member with less than five years' earned service credit or death of a member who has filed with the director a notice rejecting the provisions of Subsection C of this section, which notice shall be revocable by the member at any time prior to retirement, the member's contributions to the fund plus interest at the rate set by the board shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the estate of the member.

H. Any elections of either Option B or C of Subsection A of this section on file with the director by members who have not retired prior to June 30, 1984 are void."

Section 8. Section 22-11-30 NMSA 1978 (being Laws 1967, Chapter 16, Section 153, as amended) is amended to read:

"22-11-30. RETIREMENT BENEFITS.--

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars (\$4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first six thousand six hundred dollars (\$6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

C. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service credit.

D. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if his date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if his date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if his date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) prior employment; and

(b) allowed service credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) contributory employment;

(b) allowed service credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service credit after June 30, 1987.

G. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year earned service credit beginning on or after July 1, 1991.

H. A member's average annual salary, pursuant to this section, shall be computed on the basis of the last five years for which contribution was made or upon the basis of any consecutive five years for which contribution was made by the member, whichever is higher. Unless otherwise required by the provisions of the Internal Revenue Code of 1986, members shall begin receiving retirement benefits by age seventy and six months, or upon termination of employment, whichever occurs later."

Section 9. Section 22-11-33 NMSA 1978 (being Laws 1967, Chapter 16, Section 156) is amended to read:

"22-11-33. EARNED SERVICE CREDIT.--

A. Upon a member filing an application for retirement or disability benefits, earned service credit for the time of contributory employment shall be certified by the director and subject to the review of the board.

B. A member shall be certified to have earned service credit for that period of time when he was engaged in prior employment. Earned service credit shall not be certified for that period of employment for which the contributions have been withdrawn from the fund by the member.

C. Earned service credit shall be certified for periods of employment interrupted for some cause other than retirement or disability. This shall be done if a member withdrawing contributions from the fund for this period returns to the fund, for each year of earned service credit desired, a sum equal to the member's contribution to

the fund during this period and an additional sum as interest compounded annually from the date the contributions were withdrawn to the date of payment of the amount of returned contributions at the rate of interest set by the board. These payments may be made in installments, and, if the payments made to the fund are insufficient for the restoration of any full year of earned service credit, the member shall be certified to have acquired earned service credit for that period of time which is proportionate to the payments made."

Section 10. 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 pursuant to the Internal Revenue Code of 1986 for those periods of time when he was:

(1) employed prior to July 1, 1967 in a 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 pursuant to the Educational Retirement Act and subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994 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 on 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 a public school or public institution of higher learning in another state, territory or possession of the United States;

(b) in a 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 July 1, 1967; or

(d) in a 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. 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 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 that 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 a position covered by the Educational Retirement Act or a law repealed by that act. No allowed service credit shall be purchased pursuant to Paragraph (4) of Subsection A of this section unless the member is currently employed by a local administrative unit.

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."

Section 11. Section 22-11-36 NMSA 1978 (being Laws 1967, Chapter 16, Section 159) is amended to read:

"22-11-36. DISABILITY BENEFIT--CONTINUED ELIGIBILITY--

RE-EXAMINATIONS.--

A. Unless designated by the medical authority as being permanently disabled, to continue to receive disability benefits, a member shall, on the anniversary date in each year of his being placed on a disability status, present himself to the medical authority for a medical

re-examination. The medical authority shall certify to the director after each medical examination whether there is a substantial betterment of the member's disability. In the event a substantial betterment of the disability is reported, the board shall determine whether the member is totally disabled for employment and unable to obtain and retain other gainful employment commensurate with his background, education and experience. If the board determines that the member is no longer disabled, the payment of the disability benefits shall cease.

B. Payment of disability benefits to a member shall be suspended if a certificate of medical re-examination by the medical authority is not filed with the director within thirty days after the date upon which the member should have been re-examined where the failure to file the certificate was due to the unexcused failure or the refusal of the member to report for the medical re-examination. Payment of disability benefits shall be resumed only after the member has complied with the requirements of the Educational Retirement Act. A member shall have no right or claim for benefits withheld during a period of suspension.

C. The board may, in its discretion, require further or more frequent medical examinations of members having a disability status.

D. A member receiving disability benefits who is unable to report for a medical re-examination because of his physical condition or because he resides outside the state shall notify the director of this fact not later than fifteen days in advance of the date for the medical re-examination. The board shall designate a medical doctor in the vicinity of the residence of the member to make the medical

re-examination and to report the findings to the board.

E. Upon a determination by the board, a member's status may be changed from permanently disabled to temporarily disabled or no longer disabled."

Section 12. Section 22-11-42 NMSA 1978 (being Laws 1967, Chapter 16, Section 165, as amended) is amended to read:

"22-11-42. NONASSIGNABILITY--DIVISION OF FUNDS AS COMMUNITY PROPERTY--CHILD SUPPORT OBLIGATIONS.--

A. Except as specifically provided in the Educational Retirement Act and the provisions of Subsections B and C of this section, contributions or benefits mentioned in the Educational Retirement Act shall not be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, guarantee fund or similar assessment or any other legal process.

B. A court of competent jurisdiction, solely for the purposes of effecting a division of community property, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the

Educational Retirement Act. In so doing, the court shall fix the manner in which the warrants shall be issued, may order direct payments by the board to a person with a community interest in the pensions or benefits and may restrain the refund of member or participant contributions. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan, nor shall the court cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. A payment, ordered by a court pursuant to this subsection, shall only be made when the member or participant terminates employment and requests a refund or when the member or participant retires or is otherwise entitled to receive benefits pursuant to the Educational Retirement Act. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable.

C. A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child support obligations from the pensions or other benefits provided for in the Educational Retirement Act and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. Payments made pursuant to such orders shall only be made when the member or participant terminates employment and requests a refund of contributions or when the member or participant retires; in no case shall more money be paid out, either in a lump sum or in monthly benefits, of the fund or alternative retirement plan in enforcement of current or delinquent child support obligations than would otherwise be payable. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable."

SENATE BILL 174, AS AMENDED

CHAPTER 40

CHAPTER 40, LAWS 2003

AN ACT

RELATING TO HIGHER EDUCATION; CREATING THE WASTE MANAGEMENT
EDUCATION AND RESEARCH CONSORTIUM.

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

Section 1. WASTE MANAGEMENT EDUCATION AND RESEARCH CONSORTIUM CREATED--PURPOSE.--

A. The "waste management education and research consortium" is created and shall be a division of New Mexico state university.

B. Participating institutions in the consortium shall be New Mexico state university, the university of New Mexico, New Mexico institute of mining and technology, Dine college, Sandia national laboratories and Los Alamos national laboratory. The purposes of the consortium are to:

(1) engage in theoretical and practical education of and research on environmental and natural resource issues;

(2) disseminate knowledge acquired through educational programs;

(3) provide assistance in efforts to address environmental and natural resource problems; and

(4) cooperate with state and federal agencies.

C. The board of regents of New Mexico state university shall prepare reports showing the progress and condition of the consortium as the board deems necessary. The reports of the consortium may be printed and distributed by the board as appropriate, and revenue from the sale of the reports shall be paid into the account of New Mexico state university.

D. The consortium may receive appropriations from the legislature through the board and may receive any or other items of value from public or private sources.

SENATE BILL 177

CHAPTER 41

CHAPTER 41, LAWS 2003

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE HAZARDOUS WASTE ACT TO PROVIDE FOR A HAZARDOUS WASTE PERMIT MANAGEMENT FEE.

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

Section 1. Section 74-4-4.2 NMSA 1978 (being Laws 1981 (1st. S.S.), Chapter 8, Section 6, as amended) is amended to read:

"74-4-4.2. PERMITS--ISSUANCE--DENIAL--MODIFICATION--
SUSPENSION--REVOICATION.--

A. An application for a permit pursuant to the Hazardous Waste Act shall contain information required pursuant to Section 74-4-4.7 NMSA 1978 or to regulations promulgated by the board and shall include:

(1) estimates of the composition, quantity and concentration of any hazardous waste identified or listed under Subsection A of Section 74-4-4 NMSA 1978 or combinations of any hazardous waste and other solid waste proposed to be disposed of, treated, transported or stored and the time, frequency or rate at which the waste is proposed to be disposed of, treated, transported or stored; and

(2) an identification and description of, and other pertinent information about, the site where hazardous waste or the products of treatment of hazardous waste will be disposed of, treated, transported to or stored.

B. Hazardous waste permits shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this section.

C. The department shall provide timely review on all permit applications. Upon a determination by the secretary that the applicant has met the requirements adopted pursuant to Section 74-4-4 NMSA 1978, the secretary may issue a permit or a permit subject to any conditions necessary to protect human health and the environment for the facility.

D. The secretary may deny any permit application or modify, suspend or revoke any permit issued pursuant to the Hazardous Waste Act if the applicant or permittee has:

(1) knowingly and willfully misrepresented a material fact in the application for a permit;

(2) refused to disclose the information required under the provisions of Section 74-4-4.7 NMSA 1978;

(3) been convicted in any court, within ten years immediately preceding the date of submission of the permit application, of:

(a) a felony or other crime involving moral turpitude; or

(b) a crime defined by state or federal statutes as involving or being in restraint of trade, price-fixing, bribery or fraud;

(4) exhibited a history of willful disregard for environmental laws of any state or the United States;

(5) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States; or

(6) violated any provision of the Hazardous Waste Act, any regulation adopted and promulgated pursuant to that act or any condition of a permit issued under that act.

E. In making a finding under Subsection D of this section, the secretary may consider aggravating and mitigating factors.

F. If an applicant or permittee whose permit is being considered for denial or revocation, respectively, on any basis provided by Subsection D of this section has submitted an action plan that has been approved in writing by the secretary, and plan approval includes a period of operation under a conditional permit that will allow the applicant or permittee a reasonable opportunity to demonstrate its rehabilitation, the secretary may issue a conditional permit for a reasonable period of time. In approving an action plan intended to demonstrate rehabilitation, the secretary may consider:

(1) implementation by the applicant or permittee of formal policies;

(2) training programs and management control to minimize and prevent the occurrence of future violations;

(3) installation by the applicant or permittee of internal environmental auditing programs;

(4) the applicant's release or the permittee's release subsequent to serving a period of incarceration or paying a fine, or both, after conviction of any crime listed in Subsection D of this section; and

(5) any other factors the secretary deems relevant.

G. Notwithstanding the provisions of Subsection D of this section:

(1) a research, development and demonstration permit may be terminated upon the determination by the secretary that termination is necessary to protect human health or the environment; and

(2) a permit may be modified at the request of the permittee for just cause as demonstrated by the permittee.

H. No ruling shall be made on permit issuance, major modification, suspension or revocation without an opportunity for a public hearing at which 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; provided, however, that the secretary may, pursuant to Section 74-4-10 NMSA 1978, order the immediate termination of a research development and demonstration permit whenever the secretary determines that termination is necessary to protect human health or the environment and may order the immediate suspension or revocation of a permit for a facility that has been ordered to take corrective action or other response measures for releases of hazardous waste into the environment.

I. The secretary shall hold a public hearing on a minor permit modification if the secretary determines that there is significant public interest in the minor modification.

J. The board shall provide a schedule of fees for businesses generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste, to be deposited to the credit of the hazardous waste fund, including but not limited to:

(1) a hazardous waste business fee applicable to any business engaged in a regulated hazardous waste activity, which shall be an annual flat fee based on the type of activity;

(2) a hazardous waste generation fee applicable to any business generating hazardous waste, which shall be based on the quantity of hazardous waste generated annually; however, when any material listed in Paragraph (2) of Subsection K of Section 74-4-3 NMSA 1978 is determined by the board to be subject to regulation under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, the board may set a generation fee under this paragraph for that waste based on its volume, toxicity, mobility and economic impact on the regulated entity;

(3) a hazardous waste permit application fee, not exceeding the estimated cost of investigating the application and issuing the permit, to be paid at the time the secretary notifies the applicant by certified mail that the application has been deemed administratively complete and a technical review is scheduled; and

(4) an annual hazardous waste permit management fee based on and not exceeding the estimated cost of conducting regulatory oversight of permitted activities."

CHAPTER 42

CHAPTER 42, LAWS 2003

AN ACT

RELATING TO NATURAL RESOURCES; CREATING THE NATURAL RESOURCE REVENUE RECOVERY TASK FORCE.

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

Section 1. FINDINGS.--The legislature finds that:

A. many federal laws enacted to assist rural economies have had unintended negative consequences;

B. many New Mexico citizens rely on small family farms and ranches for their livelihood, and agriculture and extractive resource industries play a major role in the state's economy as a whole;

C. many New Mexico consumers rely on locally produced food for their families; and

D. unintended consequences of law have created economic hardship throughout rural New Mexico and have harmed the state's economy.

Section 2. NATURAL RESOURCE REVENUE RECOVERY TASK FORCE--CREATED--MEMBERS--DUTIES.--

A. There is created in the state land office an advisory task force that shall be known as the "natural resource revenue recovery task force".

B. The task force shall be composed of nine members. The speaker of the house of representatives and the president pro tempore of the senate shall each appoint two members who represent affected counties and are knowledgeable about agricultural and rural issues. The governor shall appoint three members and the commissioner of public lands shall appoint two members who:

(1) are county commissioners from affected counties;

(2) represent the different geographic regions of the state, including north, south, east and west;

(3) are knowledgeable about agricultural, forest, mining or other extractive industries and water issues; or

(4) are nominated by rural counties in the New Mexico association of counties.

C. The task force shall:

(1) review and analyze the historical and current differences between the prices received by agricultural producers and the prices paid by consumers;

(2) gather and compile information on the impact of the federal laws that affect agriculture and extraction industries, specifically the Agriculture Adjustment Act and the National Industrial Recovery Act as originally enacted;

(3) evaluate the United States congress's original objectives to stabilize commodity prices and rural income, manage public lands for multiple use, preserve grazing and water rights and foster timber harvests compared to the laws' outcomes;

(4) assess the relationship of these laws with the Treaty of Guadalupe Hidalgo, Kearny's Code and the preservation of New Mexico's private property rights contained in the United States constitution;

(5) define the economic impact of the Agriculture Adjustment Act and the National Industrial Recovery Act upon agricultural producers, natural resource industries and related businesses and the impact on county and state revenues;

(6) develop state policies to counteract the negative effect of federal law; and

(7) report its findings and recommendations annually by December 1 to the New Mexico legislative council and the governor.

D. The chair of the task force shall be elected by the task force, and the task force shall meet at the call of the chair.

E. The public members of the task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

F. The staff for the task force shall be provided by the state land office.

**Section 3. TERMINATION OF TASK FORCE--DELAYED REPEAL.--
The natural resource revenue recovery task force is terminated on
July 1, 2007 pursuant to the Sunset Act. The task force shall**

continue to operate according to the provisions of this act until July 1, 2008. Effective July 1, 2008, this act is repealed.

SENATE BILL 401, AS AMENDED

CHAPTER 43

CHAPTER 43, LAWS 2003

AN ACT

RELATING TO AVIATION; CHANGING LANDING FEE REQUIREMENTS FOR AIRPORT FACILITIES RECEIVING FUNDS UNDER THE AVIATION ACT.

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

Section 1. Section 64-1-16 NMSA 1978 (being Laws 1963, Chapter 314, Section 8, as amended) is amended to read:

"64-1-16. LANDING FEES.--An airport facility that receives funds under the Aviation Act shall not charge landing fees for aircraft, except for aircraft used in commercial activities for compensation."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 381

CHAPTER 44

CHAPTER 44, LAWS 2003

AN ACT

RELATING TO SCIENCE; CREATING THE GEOPHYSICAL RESEARCH CENTER AT THE NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY.

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

Section 1. GEOPHYSICAL RESEARCH CENTER.--

A. The "geophysical research center" is created at the New Mexico institute of mining and technology. The center may enter into contracts and receive public and private gifts, grants and donations to carry out its activities.

B. The geophysical research center shall conduct research:

(1) in areas related to and affected by water, with emphasis on atmospheric, surface and underground water;

(2) on the relationships among lightning, thunderstorms and precipitation;

(3) in earthquake, volcanology and environmental geophysics; and

(4) in basic geophysical processes and their applications to state and national issues.

SENATE BILL 490

CHAPTER 45

CHAPTER 45, LAWS 2003

AN ACT

RELATING TO METROPOLITAN COURT; INCREASING THE AMOUNT OF BONDS THAT MAY BE ISSUED FOR FINANCING THE METROPOLITAN COURT; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. Section 34-9-16 NMSA 1978 (being Laws 1998 (1st S.S.), Chapter 6, Section 9, as amended) is amended to read:

"34-9-16. 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 an amount not exceeding forty-six million five hundred thousand dollars (\$46,500,000), and an additional three million nine hundred thousand dollars (\$3,900,000) after January 1, 2003, for the purpose of financing the acquisition of real property for and the

design, construction, furnishing and equipping of a new court building for the Bernalillo county metropolitan court in Albuquerque.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the chief judge of the Bernalillo county metropolitan court and the court administrator of the Bernalillo county metropolitan court certify the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the Bernalillo county metropolitan court for the purpose described in Subsection A of this section.

C. The money distributed from the court facilities fund to the New Mexico finance authority shall be pledged irrevocably for the payment of the principal, interest and other expenses or obligations related to the bonds.

D. Until all bonds authorized by this section and Laws 2000, Chapter 5, Section 2 are issued, any money remaining in the special bond fund or account, after all principal, interest and other expenses or obligations related to the bonds in that fiscal year are fully met, shall be transferred to the magistrate and metropolitan court capital fund. After all bonds authorized by this section and Laws 2000, Chapter 5, Section 2 are issued, up to one million five hundred thousand dollars (\$1,500,000) of any money on deposit in the special bond fund or account in excess of the combined total of the principal, interest and other expenses or obligations related to the bonds coming due in that fiscal year shall be transferred annually to the magistrate and metropolitan court capital fund. After all bonds authorized by this section and Laws 2000, Chapter 5, Section 2 are issued, any amount in the special bond fund or account at the end of each fiscal year not transferred to the magistrate and metropolitan court capital fund shall be used during the succeeding fiscal year for early redemption, defeasance or retirement of bonds selected at the discretion of the New Mexico finance authority. Upon payment of all principal, interest and other expenses or obligations related to the bonds, the authority shall certify to the administrative office of the courts that all obligations for the bonds issued pursuant to this section have been fully discharged and direct the administrative office of the courts and the state treasurer to cease distributing money from the court facilities fund to the authority and to transfer the money from the court facilities fund to the magistrate and metropolitan court capital fund.

E. Any law imposing court facilities fees, authorizing the collection of court facilities fees or directing deposits into the court facilities fund or distribution of the money in the court facilities fund to the New Mexico finance authority shall not be amended, repealed or otherwise directly or indirectly modified so as to impair outstanding revenue bonds that may be secured by a pledge of the distributions from the court facilities fund to the New Mexico finance authority, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

F. The New Mexico finance authority may additionally secure the revenue bonds issued pursuant to this section by a pledge of money in the public project

revolving fund with a lien priority on the money in the public project revolving fund as determined by the authority."

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

SENATE BILL 584, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED MARCH 19, 2003

CHAPTER 46

CHAPTER 46, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOL FINANCES; PROVIDING FOR THE TIMELY PAYMENT OF SCHOOL DISTRICT GENERAL OBLIGATIONS THROUGH THE USE OF THE STATE EQUALIZATION GUARANTEE DISTRIBUTION.

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

Section 1. A new section of the Public School Code is enacted to read:

"TIMELY PAYMENT OF SCHOOL DISTRICT OBLIGATIONS.--

A. Whenever a paying agent has not received payment of principal or interest on school district general obligation bonds on the business day immediately prior to the date on which the payment is due, the paying agent shall so notify the state treasurer, the department of finance and administration, the department of education and the school district by telephone, facsimile or other similar communication, followed by written verification, of the payment status. The state treasurer shall immediately contact the school district and determine whether the school district will make the payment by the date on which it is due.

B. If the school district indicates that it will not make the payment by the date on which it is due, the state treasurer shall forward the amount in immediately available funds necessary to make the payment due on the bonds to the paying agent and shall withhold an equal amount from the next succeeding payment of the state equalization guarantee distribution. If the amount of the next succeeding payment is

insufficient to pay the amount due, the state treasurer shall withhold amounts from each succeeding payment of the state equalization guarantee distribution, including payments to be made in succeeding fiscal years but not more than twelve consecutive months of payments, until the total payment of principal and interest due has been withheld.

C. The amounts forwarded to the paying agent by the state treasurer shall be applied by the paying agent solely to the payment of the principal or interest due on the general obligation bonds of the school district. The state treasurer shall notify the department of education, the chief financial officer of the school district, the department of finance and administration, the legislative finance committee and the legislative education study committee of amounts withheld and payments made pursuant to this section.

D. Upon the issuance of general obligation bonds by a school district, the school district shall file with the state treasurer a copy of the resolution that authorizes the issuance of the bonds, a copy of the official statement or other offering document for the bonds, the agreement, if any, with the paying agent for the bonds and the name, address and telephone number of the paying agent; provided, however, that the failure of a school district to file the information shall not affect the obligation of the state treasurer to withhold the state equalization guarantee distribution pursuant to this section.

E. The state hereby covenants with the purchasers and holders of general obligation bonds issued by school districts that it will not repeal, revoke or rescind the provisions of this section or modify or amend the same so as to limit or impair the rights and remedies granted by this section; provided that nothing in this subsection shall be deemed or construed to require the state to continue the payment of a state equalization guarantee distribution to any school district or to limit or prohibit the state from repealing, amending or modifying any law relating to the amount of state equalization guarantee distributions to school districts or the manner of payment or the timing thereof. Nothing in this section shall be deemed or construed to create a debt of the state with respect to the bonds within the meaning of any state constitutional provision or to create any liability except to the extent provided in this section.

F. Whenever the state treasurer is required by this section to make a payment of principal or interest on bonds on behalf of a school district, the department of education shall initiate an audit of the school district to determine the reason for the nonpayment and to assist the school district, if necessary, in developing and implementing measures to ensure that future payments will be made when due.

G. Whenever the state treasurer makes a payment of principal and interest on bonds or other obligations of a school district and withholds amounts from the state equalization guarantee distribution pursuant to this section because of the failure to collect property taxes, the school district may transfer delinquent property

taxes later collected out of the school district's bond redemption fund and into its general fund.

H. This section applies to general obligation bonds issued by a school district on or after July 1, 2003."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 847

CHAPTER 47

CHAPTER 47, LAWS 2003

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING PROVISIONS OF THE UNEMPLOYMENT COMPENSATION LAW TO INCREASE AND EXTEND BENEFITS, DECREASE EMPLOYERS' CONTRIBUTIONS AND ELIMINATE CERTAIN RESTRICTIONS ON ELIGIBILITY FOR BENEFITS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. Section 51-1-4 NMSA 1978 (being Laws 1969, Chapter 213, Section 1, as amended by Laws 2000, Chapter 3, Section 1 and also by Laws 2000, Chapter 7, Section 1) is amended to read:

"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT GENERALLY.--

A. All benefits provided herein are payable from the unemployment compensation fund. All benefits shall be paid in accordance with rules prescribed by the secretary through employment offices or other agencies as the secretary approves by general rule.

B. Effective July 1, 2003, weekly benefits shall be as follows:

(1) an individual's "weekly benefit amount" is an amount equal to fifty-two and one-half percent of the average weekly wage for insured work paid to the individual in that quarter of the individual's base period in which total wages were highest. No benefit as so computed may be less than ten percent or more than fifty-two

and one-half percent of the state's average weekly wage for all insured work. The state's average weekly wage shall be computed from all wages reported to the department from employing units in accordance with rules of the secretary for the period ending June 30 of each calendar year divided by the total number of covered employees divided by fifty-two, effective for the benefit years commencing on or after the first Sunday of the following calendar year. An individual is not eligible to receive benefits unless the individual has wages in at least two quarters of that individual's base period. For the purposes of this subsection, "total wages" means all remuneration for insured work, including commissions and bonuses and the cash value of all remuneration in a medium other than cash;

(2) an eligible individual who is unemployed in any week during which the individual is in a continued claims status shall be paid, with respect to the week, a benefit in an amount equal to the individual's weekly benefit amount, less that part of the wages, if any, or earnings from self-employment, payable to the individual with respect to such week that is in excess of one-fifth of the individual's weekly benefit amount. For purposes of this subsection only, "wages" includes all remuneration for services actually performed in a week for which benefits are claimed, vacation pay for a period for which the individual has a definite return-to-work date, wages in lieu of notice and back pay for loss of employment but does not include payments through a court for time spent in jury service;

(3) notwithstanding any other provision of this section, an eligible individual who, pursuant to a plan financed in whole or in part by a base-period employer of the individual, is receiving a governmental or other pension, retirement pay, annuity or any other similar periodic payment that is based on the previous work of the individual and who is unemployed with respect to any week ending subsequent to April 9, 1981 shall be paid with respect to the week, in accordance with rules prescribed by the secretary, compensation equal to the individual's weekly benefit amount reduced, but not below zero, by the prorated amount of the pension, retirement pay, annuity or other similar periodic payment that exceeds the percentage contributed to the plan by the eligible individual. The maximum benefit amount payable to the eligible individual shall be an amount not more than twenty-six times his reduced weekly benefit amount. If payments referred to in this section are being received by an individual under the federal Social Security Act, the division shall take into account the individual's contribution and make no reduction in the weekly benefit amount;

(4) in the case of a lump-sum payment of a pension, retirement or retired pay, annuity or other similar payment by a base-period employer that is based on the previous work of the individual, the payment shall be allocated, in accordance with rules prescribed by the secretary, and shall reduce the amount of unemployment compensation paid, but not below zero, in accordance with Paragraph (3) of this subsection; and

(5) the retroactive payment of a pension, retirement or retired pay, annuity or any other similar periodic payment as provided in Paragraphs (3) and (4) of

this subsection attributable to weeks during which an individual has claimed or has been paid unemployment compensation shall be allocated to those weeks and shall reduce the amount of unemployment compensation for those weeks, but not below zero, by an amount equal to the prorated amount of the pension. Any overpayment of unemployment compensation benefits resulting from the application of the provisions of this paragraph shall be recovered from the claimant in accordance with the provisions of Section 51-1-38 NMSA 1978.

C. Effective January 1, 2004, an individual otherwise eligible for benefits shall be paid for each week of unemployment, in addition to the amount payable under Subsection B of this section, the sum of fifteen dollars (\$15.00) for each unemancipated child, up to a maximum of four and subject to the maximum stated in Subsection D of this section, of the individual who is in fact dependent upon and wholly or mainly supported by the individual and is:

(1) under the age of eighteen;

(2) under the age of eighteen and in the individual's custody pending the adjudication of a petition filed by the individual for the adoption of the child in a court of competent jurisdiction; or

(3) under the age of eighteen and for whom the individual is under a decree or order from a court of competent jurisdiction required to contribute to the child's support and for whom no other person is receiving allowances under the Unemployment Compensation Law if the child is domiciled within the United States or its territories or possessions, the payment to be withheld and paid pursuant to Section 51-1-37.1 NMSA 1978.

D. Effective January 1, 2004, dependency benefits shall not exceed fifty percent of the individual's weekly benefit rate. The amount of dependency benefits determined as of the beginning of an individual's benefit year shall not be reduced for the duration of the benefit year, but this provision does not prevent the transfer of dependents' benefits from one spouse to another in accordance with this subsection. If both the husband and wife receive benefits with respect to a week of unemployment, only one of them is entitled to a dependency allowance with respect to a child. The division shall prescribe standards as to who may receive a dependency allowance when both the husband and wife are eligible to receive unemployment compensation benefits. Dependency benefits shall not be paid unless the individual submits documentation satisfactory to the division establishing the existence of the claimed dependent. If the provisions of this subsection are satisfied, an otherwise eligible individual who has been appointed guardian of a dependent child by a court of competent jurisdiction shall be paid dependency benefits.

E. An otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of twenty-six times the individual's weekly benefit amount, plus any dependency benefit amount pursuant to

Subsections C and D of this section, or sixty percent of the individual's wages for insured work paid during the individual's base period.

F. A benefit as determined in Subsection B or C of this section, if not a multiple of one dollar (\$1.00), shall be rounded to the next lower multiple of one dollar (\$1.00).

G. The secretary may prescribe rules to provide for the payment of benefits that are due and payable to the legal representative, dependents, relatives or next of kin of claimants since deceased. These rules need not conform with the laws governing successions, and the payment shall be deemed a valid payment to the same extent as if made under a formal administration of the succession of the claimant.

H. The division, on its own initiative, may reconsider a monetary determination whenever it is determined that an error in computation or identity has occurred or that wages of the claimant pertinent to such determination but not considered have been newly discovered or that the benefits have been allowed or denied on the basis of misrepresentation of fact, but no redetermination shall be made after one year from the date of the original monetary determination. Notice of a redetermination shall be given to all interested parties and shall be subject to an appeal in the same manner as the original determination. In the event that an appeal involving an original monetary determination is pending at the time a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from redetermination."

Section 2. Section 51-1-5 NMSA 1978 (being Laws 1969, Chapter 213, Section 2, as amended by Laws 2000, Chapter 3, Section 2 and also by Laws 2000, Chapter 7, Section 2) is amended to read:

"51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

A. An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

(1) has made a claim for benefits with respect to such week in accordance with such rules as the secretary may prescribe;

(2) has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules as the secretary may prescribe, except that the secretary may, by rule, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the secretary finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of the Unemployment Compensation Law. No such rule shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

(3) is able to work and is available for work and is actively seeking permanent full-time work or part-time work in accordance with Subsection I of Section 51-1-42 NMSA 1978 and in accordance with the terms, conditions and hours common in the occupation or business in which the individual is seeking work, except that the secretary may, by rule, waive this requirement for individuals who are on temporary layoff status from their regular employment with an assurance from their employers that the layoff shall not exceed four weeks or who have an express offer in writing of substantially full-time work that will begin within a period not exceeding four weeks;

(4) has been unemployed for a waiting period of one week. A week shall not be counted as a week of unemployment for the purposes of this paragraph:

(a) unless it occurs within the benefit year that includes the week with respect to which the individual claims payment of benefits;

(b) if benefits have been paid with respect thereto; and

(c) unless the individual was eligible for benefits with respect thereto as provided in this section and Section 51-1-7 NMSA 1978, except for the requirements of this subsection and of Subsection D of Section 51-1-7 NMSA 1978;

(5) has been paid wages in at least two quarters of the individual's base period;

(6) has reported to an office of the division in accordance with the rules of the secretary for the purpose of an examination and review of the individual's availability for and search for work, for employment counseling, referral and placement and for participation in a job finding or employability training and development program. An individual shall not be denied benefits under this section for any week that the individual is participating in a job finding or employability training and development program; and

(7) participates in reemployment services, such as job search assistance services, if the division determines that the individual is likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the division, unless the division determines that:

(a) the individual has completed such services; or

(b) there is justifiable cause for the individual's failure to participate in the services.

B. A benefit year as provided in Section 51-1-4 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be established; provided an individual may not receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which the individual received benefits,

the individual performed service in "employment", as defined in Subsection F of Section 51-1-42 NMSA 1978, and earned remuneration for such service in an amount equal to at least five times the individual's weekly benefit amount.

C. Benefits based on service in employment defined in Paragraph (8) of Subsection F of Section 51-1-42 and Section 51-1-43 NMSA 1978 are to be paid in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other services subject to the Unemployment Compensation Law; except that:

(1) benefits based on services performed in an instructional, research or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms or, when an agreement provides for a similar period between two regular but not successive terms, during such period or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) benefits based on services performed for an educational institution other than in an instructional, research or principal administrative capacity shall not be paid for any week of unemployment commencing during a period between two successive academic years or terms if the services are performed in the first of such academic years or terms and there is a reasonable assurance that the individual will perform services for any educational institution in the second of such academic years or terms. If compensation is denied to an individual under this paragraph and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a claim and certified for benefits in accordance with the rules of the division and for which benefits were denied solely by reason of this paragraph;

(3) benefits shall be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs any services described in Paragraphs (1) and (2) of this subsection in the period immediately before such period of vacation or holiday recess and there is a reasonable assurance that the individual will perform any such services in the period immediately following such vacation period or holiday recess;

(4) benefits shall not be payable on the basis of services specified in Paragraphs (1) and (2) of this subsection during the periods specified in Paragraphs (1), (2) and (3) of this subsection to any individual who performed such services in or to or on behalf of an educational institution while in the employ of a state or local

governmental educational service agency or other governmental entity or nonprofit organization; and

(5) for the purpose of this subsection, to the extent permitted by federal law, "reasonable assurance" means a reasonable expectation of employment in a similar capacity in the second of such academic years or terms based upon a consideration of all relevant factors, including the historical pattern of reemployment in such capacity, a reasonable anticipation that such employment will be available and a reasonable notice or understanding that the individual will be eligible for and offered employment in a similar capacity.

D. Paragraphs (1), (2), (3), (4) and (5) of Subsection C of this section shall apply to services performed for all educational institutions, public or private, for profit or nonprofit, which are operated in this state or subject to an agreement for coverage under the Unemployment Compensation Law of this state, unless otherwise exempt by law.

E. Notwithstanding any other provisions of this section or Section 51-1-7 NMSA 1978, no otherwise eligible individual is to be denied benefits for any week because the individual is in training or attending school on a full-time basis with the approval of the division nor is the individual to be denied benefits by reason of application of provisions in Paragraph (3) of Subsection A of this section or Paragraph (3) of Subsection A of Section 51-1-7 NMSA 1978 with respect to any week in which the individual is in training or attending school on a full-time basis with the approval of the division. The secretary shall provide, by rule, standards for approved training and the conditions for approving training for claimants, including any training approved or authorized for approval pursuant to Section 236(a)(1) and (2) of the Trade Act of 1974, as amended, or required to be approved as a condition for certification of the state's Unemployment Compensation Law by the United States secretary of labor.

F. Notwithstanding any other provisions of this section, benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act; provided that:

(1) any information required of individuals applying for benefits to determine their eligibility for benefits under this subsection shall be uniformly required from all applicants for benefits; and

(2) an individual shall not be denied benefits because of the individual's alien status except upon a preponderance of the evidence.

G. Notwithstanding any other provision of this section, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week that commences during the period between two successive sport seasons, or similar periods, if the individual performed the services in the first of such seasons, or similar periods, and there is a reasonable assurance that the individual will perform the services in the latter of such seasons or similar periods.

H. As used in this subsection, "seasonal ski employee" means an employee who has not worked for a ski area operator for more than six consecutive months of the previous twelve months or nine of the previous twelve months. An employee of a ski area operator who has worked for a ski area operator for six consecutive months of the previous twelve months or nine of the previous twelve months shall not be considered a seasonal ski employee. The following benefit eligibility conditions apply to a seasonal ski employee:

(1) except as provided in Paragraphs (2) and (3) of this subsection, a seasonal ski employee employed by a ski area operator on a regular seasonal basis shall be ineligible for a week of unemployment benefits that commences during a period between two successive ski seasons unless the individual establishes to the satisfaction of the secretary that the individual is available for and is making an active search for permanent full-time work;

(2) a seasonal ski employee who has been employed by a ski area operator during two successive ski seasons shall be presumed to be unavailable for permanent new work during a period after the second successive ski season that the individual was employed as a seasonal ski employee; and

(3) the presumption described in Paragraph (2) of this subsection shall not arise as to any seasonal ski employee who has been employed by the same ski area operator during two successive ski seasons and has resided continuously for at least twelve successive months and continues to reside in the county in which the ski area facility is located.

I. Notwithstanding any other provision of this section, an otherwise eligible individual shall not be denied benefits for any week by reason of the application of Paragraph (3) of Subsection A of this section because the individual is before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty."

Section 3. Section 51-1-7 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 5, as amended) is amended to read:

"51-1-7. DISQUALIFICATION FOR BENEFITS.--

A. An individual shall be disqualified for, and shall not be eligible to receive, benefits:

(1) if it is determined by the division that the individual left employment voluntarily without good cause in connection with the employment; provided, however, that a person shall not be denied benefits under this paragraph:

(a) solely on the basis of pregnancy or the termination of pregnancy; or

(b) effective July 1, 2003, because of domestic abuse evidenced by medical documentation, legal documentation or a sworn statement from the claimant;

(2) if it is determined by the division that the individual has been discharged for misconduct connected with the individual's employment; or

(3) if it is determined by the division that the individual has failed without good cause either to apply for available, suitable work when so directed or referred by the division or to accept suitable work when offered.

B. In determining whether or not any work is suitable for an individual pursuant to Paragraph (3) of Subsection A of this section, the division shall consider the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness, prior training, approved training or full-time school attendance, experience, prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation and the distance of available work from the individual's residence. Notwithstanding any other provisions of the Unemployment Compensation Law, no work shall be deemed suitable and benefits shall not be denied under the Unemployment Compensation Law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) if the position offered is vacant due directly to a strike, lockout or other labor dispute;

(2) if the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations.

C. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which the division finds that the individual's unemployment is due to a labor dispute at the factory, establishment or

other premises at which the individual is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

(1) the individual is not participating in or directly interested in the labor dispute; and

(2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the dispute; provided that if in any case separate branches of work that are commonly conducted in separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

D. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which, or a part of which, the individual has received or is seeking, through any agency other than the division, unemployment benefits under an unemployment compensation law of another state or of the United States; provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

E. A disqualification pursuant to Paragraph (1) or (2) of Subsection A of this section shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit otherwise payable. A disqualification pursuant to Paragraph (3) of Subsection A of this section shall include the week the failure occurred and shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit amount otherwise payable; provided that no more than one such disqualification shall be imposed upon an individual for failure to apply for or accept the same position, or a similar position, with the same employer, except upon a determination by the division of disqualification pursuant to Subsection C of this section.

F. As used in this section:

(1) "domestic abuse" means that term as defined in Section 40-13-2 NMSA 1978; and

(2) "employment" means employment by the individual's last employer as defined by rules of the secretary."

Section 4. Section 51-1-11 NMSA 1978 (being Laws 1961, Chapter 139, Section 3, as amended by Laws 2000, Chapter 3, Section 3 and by Laws 2000, Chapter 7, Section 3) is amended to read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

A. The division shall maintain a separate account for each contributing employer and shall credit the contributing employer's account with all contributions paid by that employer under the Unemployment Compensation Law. Nothing in the Unemployment Compensation Law shall be construed to grant an employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

B. Benefits paid to an individual shall be charged against the accounts of the individual's base-period employers on a pro rata basis according to the proportion of the individual's total base-period wages received from each employer, except that no benefits paid to a claimant as extended benefits under the provisions of Section 51-1-48 NMSA 1978 shall be charged to the account of any base-period employer who is not on a reimbursable basis and who is not a governmental entity and, except as the secretary shall by rule prescribe otherwise, in the case of benefits paid to an individual who:

(1) left the employ of a base-period employer who is not on a reimbursable basis voluntarily without good cause in connection with the individual's employment;

(2) was discharged from the employment of a base-period employer who is not on a reimbursable basis for misconduct connected with the individual's employment;

(3) is employed part time by a base-period employer who is not on a reimbursable basis and who continues to furnish the individual the same part-time work while the individual is separated from full-time work for a nondisqualifying reason;
or

(4) received benefits based upon wages earned from a base-period employer who is not on a reimbursable basis while attending approved training under the provisions of Subsection E of Section 51-1-5 NMSA 1978.

C. The division shall not charge a contributing or reimbursing base-period employer's account with any portion of benefit amounts that the division can bill to or recover from the federal government as either regular or extended benefits.

D. The division shall not charge a contributing base-period employer's account with any portion of benefits paid to an individual for dependent allowance or because the individual to whom benefits are paid:

(1) separated from employment due to domestic abuse; or

(2) is enrolled in approved training or is attending school on a full-time basis.

E. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto, irrespective of the source of such contributions. The standard rate of contributions payable by each employer shall be five and four-tenths percent.

F. An employer's rate shall not be varied from the standard rate for any calendar year unless, as of the computation date for that year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months, except that:

(1) the provisions of this subsection shall not apply to governmental entities;

(2) effective January 1, 2004, any employing unit that becomes an employer subject to the payment of contributions under the Unemployment Compensation Law or has been an employer subject to the payment of contributions at a standard rate of two percent through December 31, 2003 shall be subject to the payment of contributions at the reduced rate of two percent until, as of the computation date of a particular year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months;

(3) any individual, type of organization or employing unit that acquires all or part of the trade or business of another employing unit, pursuant to Paragraphs (2) and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has a reduced rate of contribution shall be entitled to the transfer of the reduced rate to the extent permitted under Subsection H of this section; and

(4) an employer that, at the time of establishing an account, is in business in another state or states and that is not currently doing business in New Mexico may elect, pursuant to Paragraph (5) of this subsection, to receive a beginning contribution rate of two percent or a contribution rate based on the current contribution rate schedule in Paragraph (4) of Subsection I of this section, whichever is lower, if:

(a) the employer has been in operation in the other state or states for at least three years immediately preceding the date of becoming a liable employer in New Mexico, throughout which an individual in the employer's employ could have received benefits if eligible; and

(b) the employer provides the authenticated account history as defined by rule of the secretary from information accumulated from operations in the other state or all the other states to compute a current New Mexico rate;

(5) the election authorized in Paragraph (4) of this subsection shall be made in writing within thirty days after receiving notice of New Mexico liability and, if not made timely, a two percent rate will be assigned; if the election is made timely, the employer's account will receive the lesser of the computed rate determined by the condition of the account for the computation date immediately preceding the New Mexico liable date, or the reduced rate of two percent; rates for subsequent years will be determined by the condition of the account for the computation date.

G. The secretary shall, for the year 1942 and for each calendar year thereafter, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such benefit experience. An employer's rate for any calendar year shall be determined on the basis of the employer's record and the condition of the fund as of the computation date for such calendar year.

An employer may make voluntary payments in addition to the contributions required under the Unemployment Compensation Law, which shall be credited to the employer's account in accordance with department rule. The voluntary payments shall be included in the employer's account as of the employer's most recent computation date if they are made on or before the following March 1. Voluntary payments when accepted from an employer shall not be refunded in whole or in part.

H. In the case of a transfer of an employing enterprise, the experience history of the transferred enterprise as provided in Subsection G of this section shall be transferred from the predecessor employer to the successor under the following conditions and in accordance with the applicable rules of the secretary:

(1) Definitions:

(a) "employing enterprise" is a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters;

(b) "predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise;

(c) "successor" means any individual or any type of organization that acquires an employing enterprise and continues to operate such business entity; and

(d) "experience history" means the experience rating record and reserve account, including the actual contributions, benefit charges and payroll experience of the employing enterprise.

(2) For the purpose of this section, two or more employers who are parties to or the subject of any transaction involving the transfer of an employing

enterprise shall be deemed to be a single employer and the experience history of the employing enterprise shall be transferred to the successor employer if the successor employer has acquired by the transaction all of the business enterprises of the predecessor; provided that:

(a) all contributions, interest and penalties due from the predecessor employer have been paid;

(b) notice of the transfer has been given in accordance with the rules of the secretary within four years of the transaction transferring the employing enterprise or the date of the actual transfer of control and operation of the employing enterprise;

(c) in the case of the transfer of an employing enterprise, the successor employer must notify the division of the acquisition on or before the due date of the successor employer's first wage and contribution report. If the successor employer fails to notify the division of the acquisition within this time limit, the division, when it receives actual notice, shall effect the transfer of the experience history and applicable rate of contribution retroactively to the date of the acquisition, and the successor shall pay a penalty of fifty dollars (\$50.00); and

(d) where the transaction involves only a merger, consolidation or other form of reorganization without a substantial change in the ownership and controlling interest of the business entity, as determined by the secretary, the limitations on transfers stated in Subparagraphs (a), (b) and (c) of this paragraph shall not apply. A party to a merger, consolidation or other form of reorganization described in this paragraph shall not be relieved of liability for any contributions, interest or penalties due and owing from the employing enterprise at the time of the merger, consolidation or other form of reorganization.

(3) The applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor has acquired one or more of the several employing enterprises of a predecessor but not all of the employing enterprises of the predecessor and each employing enterprise so acquired was operated by the predecessor as a separate store, factory, shop or other separate employing enterprise and the predecessor, throughout the entire period of the contribution with liability applicable to each enterprise transferred, has maintained and preserved payroll records that, together with records of contribution liability and benefit chargeability, can be separated by the parties from the enterprises retained by the predecessor to the satisfaction of the secretary or the secretary's delegate. A partial experience history transfer will be made only if:

(a) the successor notifies the division of the acquisition, in writing, not later than the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition;

(b) the successor files an application provided by the division that contains the endorsement of the predecessor within thirty days from the delivery or mailing of such application by the division to the successor's last known address; and

(c) the successor files with the application a Form ES-903A or its equivalent with a schedule of the name and social security number of and the wages paid to and the contributions paid for each employee for the three and one-half year period preceding the computation date as defined in Subparagraph (d) of Paragraph (3) of Subsection I of this section through the date of transfer or such lesser period as the enterprises transferred may have been in operation. The application and Form ES-903A shall be supported by the predecessor's permanent employment records, which shall be available for audit by the division. The application and Form ES-903A shall be reviewed by the division and, upon approval, the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation by the predecessor's entire payroll.

I. For each calendar year, adjustments of contribution rates below the standard or reduced rate and measures designed to protect the fund are provided in Paragraphs (1) through (4) of this subsection.

(1) The total assets in the fund and the total of the last annual payrolls of all employers subject to contributions as of the computation date for each year shall be determined. These annual totals are here called "the fund" and "total payrolls". For each year, the "reserve" of each employer qualified under Subsection E of this section shall be fixed by the excess of the employer's total contributions over total benefit charges computed as a percentage of the employer's average payroll reported for contributions. The determination of each employer's annual rate, computed as of the computation date for each calendar year, shall be made by matching the employer's reserve as shown in the reserve column with the corresponding rate in the rate column of the applicable rate schedule of the table provided in Paragraph (4) of this subsection.

(2) Each employer's rate for each calendar year commencing January 1, 1979 or thereafter shall be:

(a) the corresponding rate in schedule 0 of the table provided in Paragraph (4) of this subsection if the fund equals at least three and seven-tenths percent of the total payrolls;

(b) the corresponding rate in schedule 1 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than three and seven-tenths percent and not less than three and four-tenths percent of the total payrolls;

(c) the corresponding rate in schedule 2 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than three and four-tenths percent and not less than two and seven-tenths percent of the total payrolls;

(d) the corresponding rate in schedule 3 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two and seven-tenths percent and not less than two percent of the total payrolls;

(e) the corresponding rate in schedule 4 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two percent and not less than one and one-half percent of the total payrolls;

(f) the corresponding rate in schedule 5 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than one and one-half percent and not less than one percent of the total payrolls; or

(g) the corresponding rate in schedule 6 of the table provided in Paragraph (4) of this subsection if the fund has dropped less than one percent of the total payrolls.

(3) As used in this section:

(a) "annual payroll" means the total amount of remuneration from an employer for employment during a twelve-month period ending on a computation date, and "average payroll" means the average of the last three annual payrolls;

(b) "base-period wages" means the wages of an individual for insured work during the individual's base period on the basis of which the individual's benefit rights were determined;

(c) "base-period employers" means the employers of an individual during the individual's base period; and

(d) "computation date" for each calendar year means the close of business on June 30 of the preceding calendar year.

(4) Table of employer reserves and contribution rate schedules:

Employer Reserve	Contribution Schedule 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.03%	0.05%	0.1%	0.6%
9.0%-9.9%	0.06%	0.1%	0.2%	0.9%

8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
(-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
(-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
(-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
Under (-2.0%)	5.40%	5.4%	5.4%	5.4%

Employer Contribution Contribution Contribution

Reserve Schedule 4 Schedule 5 Schedule 6

10.0% and over	0.9%	1.2%	2.7%
9.0%-9.9%	1.2%	1.5%	2.7%
8.0%-8.9%	1.5%	1.8%	2.7%
7.0%-7.9%	1.8%	2.1%	2.7%
6.0%-6.9%	2.1%	2.4%	2.7%
5.0%-5.9%	2.4%	2.7%	3.0%
4.0%-4.9%	2.7%	3.0%	3.3%
3.0%-3.9%	3.0%	3.3%	3.6%

2.0%-2.9%	3.3%	3.6%	3.9%
1.0%-1.9%	3.6%	3.9%	4.2%
0.9%-0.0%	3.9%	4.2%	4.5%
(-0.1%)-(0.5%)	4.2%	4.5%	4.8%
(-0.5%)-(1.0%)	4.5%	4.8%	5.1%
(-1.0%)-(2.0%)	5.0%	5.1%	5.3%
Under (-2.0%)	5.4%	5.4%	5.4%

J. The division shall promptly notify each employer of the employer's rate of contributions as determined for any calendar year pursuant to this section. Such notification shall include the amount determined as the employer's average payroll, the total of all of the employer's contributions paid on the employer's behalf and credited to the employer's account for all past years and total benefits charged to the employer's account for all such years. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

K. The division shall provide each contributing employer, within ninety days of the end of each calendar quarter, a written determination of benefits chargeable to the employer's account. Such determination shall become conclusive and binding upon the employer for all purposes unless, within thirty days after the mailing of the determination to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such determination, the employer files an application for

review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing in any proceeding involving the employer's contribution liability to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

L. The contributions, together with interest and penalties thereon imposed by the Unemployment Compensation Law, shall not be assessed nor shall action to collect the same be commenced more than four years after a report showing the amount of the contributions was due. In the case of a false or fraudulent contribution report with intent to evade contributions or a willful failure to file a report of all contributions due, the contributions, together with interest and penalties thereon, may be assessed or an action to collect such contributions may be begun at any time. Before the expiration of such period of limitation, the employer and the secretary may agree in writing to an extension thereof and the period so agreed on may be extended by subsequent agreements in writing. In any case where the assessment has been made and action to collect has been commenced within four years of the due date of any contribution, interest or penalty, including the filing of a warrant of lien by the secretary pursuant to Section 51-1-36 NMSA 1978, such action shall not be subject to any period of limitation.

M. The secretary shall correct any error in the determination of an employer's rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer's rate of contribution may have been issued and contributions paid pursuant to the notification. Upon issuance by the division of a corrected rate of contribution, the employer shall have the same rights to review and redetermination as provided in Subsection I of this section.

N. Any interest required to be paid on advances to this state's unemployment compensation fund under Title 12 of the Social Security Act shall be paid in a timely manner as required under Section 1202 of Title 12 of the Social Security Act and shall not be paid, directly or indirectly, by the state from amounts in the state's unemployment compensation fund."

Section 5. Section 51-1-19 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 9, as amended) is amended to read:

"51-1-19. UNEMPLOYMENT COMPENSATION FUND.--

A. There is hereby established as a special fund, separate and apart from all public money, or funds of this state, an "unemployment compensation fund", which shall be administered by the department exclusively for the purposes of this section. The fund shall consist of:

(1) all contributions collected and payments in lieu of contributions collected or due pursuant to the Unemployment Compensation Law;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities;

(5) all money received from the federal unemployment account in the unemployment trust fund in accordance with Title 12 of the Social Security Act, as amended;

(6) all money credited to this state's account in the unemployment trust fund pursuant to Section 903 of the Social Security Act, as amended;

(7) all money received or due from the federal government as reimbursements pursuant to Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(8) all money received for the fund from any other source. All money in the fund shall be mingled and undivided.

B. The state treasurer shall be the treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the department and shall issue his checks upon it in accordance with such regulations as the secretary may prescribe. He shall maintain, within the fund, three separate accounts:

(1) a clearing account;

(2) an unemployment trust fund account; and

(3) a benefit account.

C. All money payable to the fund upon receipt thereof by the department shall be forwarded to the treasurer, who shall immediately deposit it in the clearing account. Refunds payable pursuant to Sections 51-1-36 and 51-1-42 NMSA 1978 shall be paid from the clearing account or the benefit account upon checks issued by the

treasurer under the direction of the department. After clearance thereof, all money in the clearing account, except as herein otherwise provided, shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to Section 904 of the act of congress known as the Social Security Act, as amended (42 U.S.C. Section 1104), any provisions of law in this state relating to the deposits, administration, release or disbursements of money in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all money requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the secretary, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Money in the clearing and benefit accounts shall not be commingled with other state funds but shall be maintained in separate accounts on the books of the depository.

D. All of the money not deposited in the treasury of the United States shall be subject to the general laws applicable to the deposit of public money in the state; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of this state.

E. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment compensation fund provided for under this section. The liability on the official bond of the state treasurer shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to the liability of any separate bond existent on the effective date of this provision or that may be given in the future. All sums recovered for losses sustained by the fund shall be deposited therein.

F. All money in the clearing account established under this section is hereby appropriated for the purpose of making refunds pursuant to Sections 51-1-36 and 51-1-42 NMSA 1978, and all money in the clearing account not needed for the purpose of making the refunds shall be immediately paid to the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, and the money in the unemployment trust fund is hereby appropriated for the purposes of this section.

G. Money shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and for the payment of refunds pursuant to Sections 51-1-36 and 51-1-42 NMSA 1978 in accordance with regulations prescribed by the secretary, except that money credited to this state's account pursuant to Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in Subsection H of this section. The secretary shall, from time to time, requisition from the unemployment trust fund such amounts not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt

thereof, the treasurer shall deposit such money in the benefit account and shall issue his checks for the payment of benefits solely from such benefit account. Expenditures of such money in the benefit account and refunds from the benefit account or the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All money shall be withdrawn from the fund only upon a warrant issued by the department or its duly authorized agent upon the treasurer, and the treasurer upon receipt of such warrants shall issue his check against the fund in accordance with the warrant of the secretary. Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for, the payment of benefits and refunds during succeeding periods, or in the discretion of the secretary, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in Subsection C of this section. All money in the benefit account provided for hereinabove is hereby appropriated for the payment of benefits and refunds as provided herein.

H. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to Section 903 of the Social Security Act may be requisitioned from this state's account or used only for:

(1) the payment of benefits pursuant to Subsection G of this section; and

(2) the payment of expenses incurred for the administration of the Unemployment Compensation Law and the federal Wagner-Peyser Act; provided that any money requisitioned and used for the payment of expenses incurred for the administration of the Unemployment Compensation Law and the federal Wagner-Peyser Act must be authorized by the enactment of a specific appropriation by the legislature that:

(a) specifies the purpose for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, except for amounts distributed to the state of New Mexico on March 13, 2002 pursuant to Section 209 of the federal Temporary Extended Unemployment Compensation Act of 2002;

(c) limits the amount that may be obligated to an amount which does not exceed the amount by which 1) the aggregate of the amounts credited to the account of this state pursuant to Section 903 of the Social Security Act exceeds 2) the aggregate of the amounts used by the state pursuant to this subsection and charged against the amounts transferred to the account of this state; and

(d) notwithstanding the provisions of Paragraph (1) of this subsection, money credited with respect to federal fiscal years 1999, 2000 and 2001 shall be used only for the administration of the Unemployment Compensation Law.

I. Amounts credited to this state's account in the unemployment trust fund under Section 903 of the Social Security Act that are obligated for administration shall be charged against transferred amounts at the exact time the obligation is entered into. The appropriation, obligation and expenditure or other disposition of money appropriated under Subsection H of this section shall be accounted for in accordance with standards established by the United States secretary of labor.

J. Money appropriated under Subsection H of this section for payment of expenses of administration shall be requisitioned as needed for payment of the obligations incurred under such appropriations and, upon requisition, shall be deposited in the unemployment compensation administration fund but, until expended, shall remain a part of the unemployment compensation fund for use only in accordance with the conditions specified in Subsection H of this section, notwithstanding any provision of Section 51-1-34 NMSA 1978. Any money so deposited that will not be expended shall be returned promptly to the account of the state in the unemployment trust fund.

K. The provisions of Subsections A through J of this section to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by the state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all money, properties or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit and release such money, properties or securities in a manner approved by the secretary, in accordance with the provisions of this section; provided that such money shall be invested in the following readily marketable classes of securities; bonds or other interest-bearing obligations of the United States and of the state; and provided further that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the secretary."

Section 6. 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, except that "base period" means for benefit years effective on or after January 1, 2004 for an individual who does not have sufficient wages in the base period as defined to qualify for benefits pursuant to Section 51-1-5 NMSA 1978, the individual's base period shall be the last four completed calendar quarters immediately preceding the first day of the individual's benefit year if that period qualifies the individual for benefits pursuant to Section 51-1-5 NMSA 1978; provided that:

(1) wages that fall within the base period of claims established pursuant to this subsection are not available for reuse in qualifying for a subsequent benefit year; and

(2) in the case of a combined-wage claim pursuant to the arrangement approved by the federal secretary of labor, the base period is that base period applicable under the unemployment compensation law of the paying state;

B. "benefits" means the cash unemployment compensation payments payable to an eligible individual pursuant to Section 51-1-4 NMSA 1978 with respect to the individual's 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 the employer;

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. An individual performing services for an employing unit that 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. An individual performing services for a contractor, subcontractor or agent that is 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 the contractor, subcontractor or agent is itself an employer within the provisions of Subsection E of this section;

E. "employer" includes:

(1) an employing unit that:

(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 that at the time of the 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) an employing unit that acquired all or part of the organization, trade, business or assets of another employing unit and that, if treated as a single unit with the other employing unit or part thereof, would be an employer under Paragraph (1) of this subsection;

(4) an 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) that, 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 that act, to be an "employer" under the Unemployment Compensation Law;

(5) an employing unit that, 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 that has elected to become fully subject to the Unemployment Compensation Law;

(7) an 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; and

(8) an Indian tribe as defined in 26 USCA Section 3306(u) for which service in employment is performed;

F. "employment":

(1) means any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) means 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) means 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) means 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 the election;

(5) means 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) the individual has been and will continue to be free from control or direction over the performance of the services both under the individual's contract of service and in fact;

(b) the service is either outside the usual course of business for which the 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) the 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) means service performed after December 31, 1977 by an individual in agricultural labor as defined in Subsection Q of this section if:

(a) the service is performed for an employing unit that: 1) paid remuneration in cash of twenty thousand dollars (\$20,000) or more to individuals in that 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 the weeks were consecutive, and regardless of whether the individuals were employed at the same time;

(b) the 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 federal Immigration and Nationality Act; and

(c) for purposes of this paragraph, an 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 the crew leader: 1) if the crew leader meets the requirements of a crew leader as defined in Subsection L of this section; or 2) substantially all the members of the crew operate or maintain mechanized agricultural equipment that is provided by the crew leader; and 3) the individuals performing the 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) means 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) means 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) means 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 that 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 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 the 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) means, 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) means service performed in the employ of an Indian tribe if:

(a) the service is excluded from "employment" as defined in 26 USCA Section 3306(c) solely by reason of 26 USCA Section 3306(c)(7); and

(b) the service is not otherwise excluded from employment pursuant to the Unemployment Compensation Law;

(12) does not include:

(a) service performed in the employ of: 1) a church or convention or association of churches; or 2) an organization that is operated primarily for religious purposes and that 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 of 1986, 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 that 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 the individual for the 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 the 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 the work relief or work training;

(l) service performed by an individual who is enrolled at a nonprofit or public educational institution that 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 the institution that 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 any employer;

(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 the service is performed by a student who is enrolled and is regularly attending classes at the school, college or university;

(p) service performed by an individual for a fixed or contract fee officiating at a sporting event that 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

(13) 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 the

individual constitute employment, all the services of the individual for the 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 the individual do not constitute employment, then none of the services of the individual for the 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 the individual. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing the individual where any of such service is excepted by Subparagraph (f) of Paragraph (12) 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 the individual performs no services and with respect to which no wages are payable to the individual and during which the individual is not engaged in self-employment or receives an award of back pay for loss of employment. The secretary shall prescribe by rule 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, but no individual who is otherwise eligible, shall be deemed ineligible for benefits solely for the reason that the individual seeks, applies for or accepts only part-time work, instead of full-time work, if the part-time work is for at least twenty hours per week;

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 federal Migrant and Seasonal Agricultural Worker Protection Act;

(2) furnishes individuals to perform services in agricultural labor for any other person;

(3) pays, either on the crew leader's own behalf or on behalf of such other person, the individuals so furnished by the crew leader for service in agricultural labor; and

(4) has not entered into a written agreement with the other person for whom the crew leader furnishes individuals in agricultural labor that the individuals will be the employees of the other person;

M. "week" means such period of seven consecutive days, as the secretary may by rule prescribe. The secretary may by rule prescribe that a week shall be deemed to be "in", "within" or "during" the benefit year that 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 an 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 the individual's last preceding benefit year; provided that at the time of filing such a claim the individual has been paid the wage 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 a person, in connection with cultivating the soil or in connection with raising or harvesting an 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 the farm and its tools and equipment, if the major part of the 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 the 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 B of Section 51-1-13 NMSA 1978 or Subsection E of Section 51-1-59 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 rules 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 percent of the state's average annual earnings computed by the division by dividing total wages reported to the division 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 the employ of an employing unit under a plan or system established by the employing unit that makes provision for individuals in its employ generally or for a class or classes of individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any payment, on account of:

(a) retirement if the payments are made by an employer to or on behalf of an 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 the employee or class of employees and does not include any payments that 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 the 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 the 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 the individual's employing unit and has not the right under the provisions of the plan or system or policy of insurance providing for the death benefit to assign the benefit, or to receive a cash consideration in lieu of the benefit either upon the individual's withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of the individual's service with the employing unit;

(3) remuneration for agricultural labor paid in any medium other than cash;

(4) a 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) a payment made, or benefit furnished to or for the benefit of an employee if at the time of the payment or such furnishing it is reasonable to believe that the employee will be able to exclude the payment or benefit from income under Section 129 of the federal Internal Revenue Code of 1986;

(6) a payment made by an employer to a survivor or the estate of a former employee after the calendar year in which the employee died;

(7) a payment made to, or on behalf of, an employee or the employee's beneficiary under an arrangement to which Section 408(p) of the federal Internal Revenue Code of 1986 applies, other than any elective contributions under Paragraph (2)(A)(i) of that section;

(8) a payment made to or for the benefit of an employee if at the time of the payment it is reasonable to believe that the employee will be able to exclude the payment from income under Section 106 of the federal Internal Revenue Code of 1986; or

(9) the value of any meals or lodging furnished by or on behalf of the employer if at the time the benefit is provided it is reasonable to believe that the employee will be able to exclude such items from income under Section 119 of the federal Internal Revenue Code of 1986."

Section 7. Section 51-1-48 NMSA 1978 (being Laws 1971, Chapter 209, Section 7, as amended) is amended to read:

"51-1-48. DEFINITIONS--EXTENDED BENEFITS.--

A. As used in this section, unless the context clearly requires otherwise, "extended benefit period" means a period that:

(1) begins with the third week after a week for which there is a state "on" indicator;

(2) ends with either of the following weeks, whichever occurs later:

(a) the third week after the first week for which there is a state "off" indicator; or

(b) the thirteenth consecutive week of such period; and

(3) does not begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period that was in effect with respect to this state.

B. There is a "state 'on' indicator" for this state for a week if the rate of insured unemployment not seasonally adjusted under this section for the period consisting of that week and the immediately preceding twelve weeks:

(1) equaled or exceeded one hundred twenty percent of the average of the rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; and

(2) equaled or exceeded five percent; or

(3) equaled or exceeded six percent, regardless of the rate of insured unemployment in the two previous years; or

(4) with respect to benefits for weeks of unemployment beginning after July 1, 2003:

(a) the average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent; and

(b) the average rate of total unemployment in this state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in Subparagraph (a) of this paragraph, equals or exceeds one hundred ten percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

C. There is a "state 'off' indicator" for this state for a week only if, for the period consisting of that week and the immediately preceding twelve weeks, none of the options specified in Subsection B of this section result in a "state 'on' indicator".

D. Except as provided in Subsection E of this section, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) fifty percent of the total amount of regular benefits that were payable to the individual pursuant to this section in the individual's applicable benefit year;

(2) thirteen times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year; or

(3) thirty-nine times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits that were paid, or deemed paid, to the individual pursuant to this section with respect to the benefit year; provided that the amount determined pursuant to this paragraph shall be reduced by the total amount of additional benefits paid, or deemed paid, to the individual under the provisions of this section for weeks of unemployment in the individual's benefit year that began prior to the effective date of the extended benefit period that is current in the week for which the individual first claims extended benefits; and provided further, if the benefit year of the individual ends within an extended benefit period, the remaining balance of the extended benefits that the individual would, but for this paragraph, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced,

but not below zero, by the product of the number of weeks for which the individual received any amounts as readjustment allowances within that benefit year multiplied by the individual weekly benefit amount for extended benefits.

E. Effective with respect to weeks beginning in a high-unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) eighty percent of the total amount of regular benefits that were payable to the individual pursuant to this section in the individual's applicable benefit year;

(2) twenty times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year; or

(3) forty-six times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year reduced by the total amount of regular benefits that were paid, or deemed paid, to the individual pursuant to this section with respect to the benefit year; provided that the amount determined pursuant to this paragraph shall be reduced by the total amount of additional benefits paid, or deemed paid, to the individual under the provisions of this section for weeks of unemployment in the individual's benefit year that began prior to the effective date of the extended benefit period that is current in the week for which the individual first claims extended benefits; and provided further, if the benefit year of an individual ends within an extended benefit period, the remaining balance of the extended benefits that the individual would, but for this paragraph, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as readjustment allowances within that benefit year multiplied by the individual weekly benefit amount for extended benefits.

F. For purposes of Subsection E of this section, "high-unemployment period" means a period during which an extended benefit period would be in effect if Paragraph (4) of Subsection B of this section were applied by substituting "eight percent" for "six and one-half percent".

G. A benefit paid to an individual pursuant to this section shall be charged pursuant to Subsection B of Section 51-1-11 NMSA 1978.

H. As used in this section:

(1) "rate of insured unemployment" means the percentage derived by dividing:

(a) the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the secretary on the basis of his reports to the United States secretary of labor; by

(b) the average monthly employment covered under the Unemployment Compensation Law for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period;

(2) "regular benefits" means benefits payable to an individual under the Unemployment Compensation Law or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., Chapter 85, other than extended benefits;

(3) "extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., Chapter 85, payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period;

(4) "eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year that begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter that begin in such period;

(5) "exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available to the individual under the Unemployment Compensation Law or any other state law, including dependent's allowance and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., Chapter 85, in the individual's current benefit year that includes such week; provided that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to the individual, although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits; or

(b) if the individual's benefit year has expired prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit year that would include such week; and

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Trade Act of 1974, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United

States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual is considered an exhaustee; and

(6) "state law" means the unemployment insurance law of any state, approved by the United States secretary of labor under Section 3304 of the Internal Revenue Code of 1986."

Section 8. Section 51-1-4 NMSA 1978 (being Laws 1969, Chapter 213, Section 1, as amended, and as further amended by Section 1 of this act) is repealed and a new Section 51-1-4 NMSA 1978 is enacted to read:

**"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT
GENERALLY.--**

A. All benefits provided herein are payable from the unemployment compensation fund. All benefits shall be paid in accordance with rules prescribed by the secretary through employment offices or other agencies as the secretary approves by general rule.

B. Weekly benefits shall be as follows:

(1) an individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid to the individual in that quarter of the individual's base period in which total wages were highest. No benefit as so computed may be less than ten percent or more than fifty-two and one-half percent of the state's average weekly wage for all insured work. The state's average weekly wage shall be computed from all wages reported to the department from employing units in accordance with rules of the secretary for the period ending June 30 of each calendar year divided by the total number of covered employees divided by fifty-two, effective for the benefit years commencing on or after the first Sunday of the following calendar year. An individual is not eligible to receive benefits unless the individual has wages in at least two quarters of that individual's base period. For the purposes of this subsection, "total wages" means all remuneration for insured work, including commissions and bonuses and the cash value of all remuneration in a medium other than cash;

(2) an eligible individual who is unemployed in any week during which the individual is in a continued claims status shall be paid, with respect to the week, a benefit in an amount equal to the individual's weekly benefit amount, less that part of the wages, if any, or earnings from self-employment, payable to the individual with respect to such week that is in excess of one-fifth of the individual's weekly benefit amount. For purposes of this subsection only, "wages" includes all remuneration for services actually performed in a week for which benefits are claimed, vacation pay for a period for which the individual has a definite return-to-work date, wages in lieu of notice

and back pay for loss of employment but does not include payments through a court for time spent in jury service;

(3) notwithstanding any other provision of this section, an eligible individual who, pursuant to a plan financed in whole or in part by a base-period employer of the individual, is receiving a governmental or other pension, retirement pay, annuity or any other similar periodic payment that is based on the previous work of the individual and who is unemployed with respect to any week ending subsequent to April 9, 1981 shall be paid with respect to the week, in accordance with rules prescribed by the secretary, compensation equal to the individual's weekly benefit amount reduced, but not below zero, by the prorated amount of the pension, retirement pay, annuity or other similar periodic payment that exceeds the percentage contributed to the plan by the eligible individual. The maximum benefit amount payable to the eligible individual shall be an amount not more than twenty-six times his reduced weekly benefit amount. If payments referred to in this section are being received by an individual under the federal Social Security Act, the division shall take into account the individual's contribution and make no reduction in the weekly benefit amount;

(4) in the case of a lump-sum payment of a pension, retirement or retired pay, annuity or other similar payment by a base-period employer that is based on the previous work of the individual, the payment shall be allocated, in accordance with rules prescribed by the secretary, and shall reduce the amount of unemployment compensation paid, but not below zero, in accordance with Paragraph (3) of this subsection; and

(5) the retroactive payment of a pension, retirement or retired pay, annuity or any other similar periodic payment as provided in Paragraphs (3) and (4) of this subsection attributable to weeks during which an individual has claimed or has been paid unemployment compensation shall be allocated to those weeks and shall reduce the amount of unemployment compensation for those weeks, but not below zero, by an amount equal to the prorated amount of the pension. Any overpayment of unemployment compensation benefits resulting from the application of the provisions of this paragraph shall be recovered from the claimant in accordance with the provisions of Section 51-1-38 NMSA 1978.

C. An otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of twenty-six times the individual's weekly benefit amount or sixty percent of the individual's wages for insured work paid during the individual's base period.

D. A benefit as determined in Subsection B or C of this section, if not a multiple of one dollar (\$1.00), shall be rounded to the next lower multiple of one dollar (\$1.00).

E. The secretary may prescribe rules to provide for the payment of benefits that are due and payable to the legal representative, dependents, relatives or

next of kin of claimants since deceased. These rules need not conform with the laws governing successions, and the payment shall be deemed a valid payment to the same extent as if made under a formal administration of the succession of the claimant.

F. The division, on its own initiative, may reconsider a monetary determination whenever it is determined that an error in computation or identity has occurred or that wages of the claimant pertinent to such determination but not considered have been newly discovered or that the benefits have been allowed or denied on the basis of misrepresentation of fact, but no redetermination shall be made after one year from the date of the original monetary determination. Notice of a redetermination shall be given to all interested parties and shall be subject to an appeal in the same manner as the original determination. In the event that an appeal involving an original monetary determination is pending at the time a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from redetermination."

Section 9. Section 51-1-5 NMSA 1978 (being Laws 1969, Chapter 213, Section 2, as amended, and as further amended by Section 2 of this act) is repealed and a new Section 51-1-5 NMSA 1978 is enacted to read:

"51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

A. An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

(1) has made a claim for benefits with respect to such week in accordance with such rules as the secretary may prescribe;

(2) has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules as the secretary may prescribe, except that the secretary may, by rule, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the secretary finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of the Unemployment Compensation Law. No such rule shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

(3) is able to work and is available for work and is actively seeking permanent and substantially full-time work in accordance with the terms, conditions and hours common in the occupation or business in which the individual is seeking work, except that the secretary may, by rule, waive this requirement for individuals who are on temporary layoff status from their regular employment with an assurance from their employers that the layoff shall not exceed four weeks or who have an express offer in writing of substantially full-time work that will begin within a period not exceeding four weeks;

(4) has been unemployed for a waiting period of one week. A week shall not be counted as a week of unemployment for the purposes of this paragraph:

(a) unless it occurs within the benefit year that includes the week with respect to which the individual claims payment of benefits;

(b) if benefits have been paid with respect thereto; and

(c) unless the individual was eligible for benefits with respect thereto as provided in this section and Section 51-1-7 NMSA 1978, except for the requirements of this subsection and of Subsection D of Section 51-1-7 NMSA 1978;

(5) has been paid wages in at least two quarters of the individual's base period;

(6) has reported to an office of the division in accordance with the rules of the secretary for the purpose of an examination and review of the individual's availability for and search for work, for employment counseling, referral and placement and for participation in a job finding or employability training and development program. An individual shall not be denied benefits under this section for any week that the individual is participating in a job finding or employability training and development program; and

(7) participates in reemployment services, such as job search assistance services, if the division determines that the individual is likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the division, unless the division determines that:

(a) the individual has completed such services; or

(b) there is justifiable cause for the individual's failure to participate in the services.

B. A benefit year as provided in Section 51-1-4 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be established; provided an individual may not receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which the individual received benefits, the individual performed service in "employment", as defined in Subsection F of Section 51-1-42 NMSA 1978, and earned remuneration for such service in an amount equal to at least five times the individual's weekly benefit amount.

C. Benefits based on service in employment defined in Paragraph (8) of Subsection F of Section 51-1-42 and Section 51-1-43 NMSA 1978 are to be paid in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other services subject to the Unemployment Compensation Law; except that:

(1) benefits based on services performed in an instructional, research or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms or, when an agreement provides for a similar period between two regular but not successive terms, during such period or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) benefits based on services performed for an educational institution other than in an instructional, research or principal administrative capacity shall not be paid for any week of unemployment commencing during a period between two successive academic years or terms if the services are performed in the first of such academic years or terms and there is a reasonable assurance that the individual will perform services for any educational institution in the second of such academic years or terms. If compensation is denied to an individual under this paragraph and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a claim and certified for benefits in accordance with the rules of the division and for which benefits were denied solely by reason of this paragraph;

(3) benefits shall be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs any services described in Paragraphs (1) and (2) of this subsection in the period immediately before such period of vacation or holiday recess and there is a reasonable assurance that the individual will perform any such services in the period immediately following such vacation period or holiday recess;

(4) benefits shall not be payable on the basis of services specified in Paragraphs (1) and (2) of this subsection during the periods specified in Paragraphs (1), (2) and (3) of this subsection to any individual who performed such services in or to or on behalf of an educational institution while in the employ of a state or local governmental educational service agency or other governmental entity or nonprofit organization; and

(5) for the purpose of this subsection, to the extent permitted by federal law, "reasonable assurance" means a reasonable expectation of employment in a similar capacity in the second of such academic years or terms based upon a consideration of all relevant factors, including the historical pattern of reemployment in such capacity, a reasonable anticipation that such employment will be available and a reasonable notice or understanding that the individual will be eligible for and offered employment in a similar capacity.

D. Paragraphs (1), (2), (3), (4) and (5) of Subsection C of this section shall apply to services performed for all educational institutions, public or private, for profit or nonprofit, which are operated in this state or subject to an agreement for coverage under the Unemployment Compensation Law of this state, unless otherwise exempt by law.

E. Notwithstanding any other provisions of this section or Section 51-1-7 NMSA 1978, no otherwise eligible individual is to be denied benefits for any week because the individual is in training with the approval of the division nor is the individual to be denied benefits by reason of application of provisions in Paragraph (3) of Subsection A of this section or Subsection C of Section 51-1-7 NMSA 1978 with respect to any week in which the individual is in training with the approval of the division. The secretary shall provide, by rule, standards for approved training and the conditions for approving training for claimants, including any training approved or authorized for approval pursuant to Section 236(a)(1) and (2) of the Trade Act of 1974, as amended, or required to be approved as a condition for certification of the state's Unemployment Compensation Law by the United States secretary of labor.

F. Notwithstanding any other provisions of this section, benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act; provided that:

(1) any information required of individuals applying for benefits to determine their eligibility for benefits under this subsection shall be uniformly required from all applicants for benefits; and

(2) an individual shall not be denied benefits because of the individual's alien status except upon a preponderance of the evidence.

G. Notwithstanding any other provision of this section, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week that commences during the period between two successive sport seasons, or similar periods, if the individual performed the services in the first of such seasons, or similar periods, and there is a reasonable assurance that the individual will perform the services in the latter of such seasons or similar periods.

H. Students who are enrolled in a full-time course schedule in an educational or training institution or program, other than those persons in an approved vocational training program in accordance with Subsection E of this section, shall not be

eligible for unemployment benefits except as provided by regulations promulgated by the secretary.

I. As used in this subsection, "seasonal ski employee" means an employee who has not worked for a ski area operator for more than six consecutive months of the previous twelve months or nine of the previous twelve months. An employee of a ski area operator who has worked for a ski area operator for six consecutive months of the previous twelve months or nine of the previous twelve months shall not be considered a seasonal ski employee. The following benefit eligibility conditions apply to a seasonal ski employee:

(1) except as provided in Paragraphs (2) and (3) of this subsection, a seasonal ski employee employed by a ski area operator on a regular seasonal basis shall be ineligible for a week of unemployment benefits that commences during a period between two successive ski seasons unless the individual establishes to the satisfaction of the secretary that the individual is available for and is making an active search for permanent full-time work;

(2) a seasonal ski employee who has been employed by a ski area operator during two successive ski seasons shall be presumed to be unavailable for permanent new work during a period after the second successive ski season that the individual was employed as a seasonal ski employee; and

(3) the presumption described in Paragraph (2) of this subsection shall not arise as to any seasonal ski employee who has been employed by the same ski area operator during two successive ski seasons and has resided continuously for at least twelve successive months and continues to reside in the county in which the ski area facility is located.

J. Notwithstanding any other provision of this section, an otherwise eligible individual shall not be denied benefits for any week by reason of the application of Paragraph (3) of Subsection A of this section because the individual is before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty."

Section 10. Section 51-1-7 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 5, as amended, and as further amended by Section 3 of this act) is repealed and a new Section 51-1-7 NMSA 1978 is enacted to read:

"51-1-7. DISQUALIFICATION FOR BENEFITS.--

A. An individual shall be disqualified for, and shall not be eligible to receive, benefits:

(1) if it is determined by the division that the individual left employment voluntarily without good cause in connection with the employment; provided, however, that a person shall not be denied benefits under this paragraph solely on the basis of pregnancy or the termination of pregnancy;

(2) if it is determined by the division that the individual has been discharged for misconduct connected with the individual's employment; or

(3) if it is determined by the division that the individual has failed without good cause either to apply for available, suitable work when so directed or referred by the division or to accept suitable work when offered.

B. In determining whether or not any work is suitable for an individual pursuant to Paragraph (3) of Subsection A of this section, the division shall consider the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness, prior training, experience, prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation and the distance of available work from the individual's residence. Notwithstanding any other provisions of the Unemployment Compensation Law, no work shall be deemed suitable and benefits shall not be denied under the Unemployment Compensation Law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) if the position offered is vacant due directly to a strike, lockout or other labor dispute;

(2) if the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations.

C. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which the division finds that the individual's unemployment is due to a labor dispute at the factory, establishment or other premises at which the individual is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

(1) the individual is not participating in or directly interested in the labor dispute; and

(2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are

participating in or directly interested in the dispute; provided that if in any case separate branches of work that are commonly conducted in separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

D. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which, or a part of which, the individual has received or is seeking, through any agency other than the division, unemployment benefits under an unemployment compensation law of another state or of the United States; provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

E. A disqualification pursuant to Paragraph (1) or (2) of Subsection A of this section shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit otherwise payable. A disqualification pursuant to Paragraph (3) of Subsection A of this section shall include the week the failure occurred and shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit amount otherwise payable; provided that no more than one such disqualification shall be imposed upon an individual for failure to apply for or accept the same position, or a similar position, with the same employer, except upon a determination by the division of disqualification pursuant to Subsection C of this section.

F. As used in this section, "employment" means employment by the individual's last employer as defined by rules of the secretary."

Section 11. Section 51-1-11 NMSA 1978 (being Laws 1961, Chapter 139, Section 3, as amended, and as further amended by Section 4 of this act) is repealed and a new Section 51-1-11 NMSA 1978 is enacted to read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

A. The division shall maintain a separate account for each contributing employer and shall credit the contributing employer's account with all contributions paid by that employer under the Unemployment Compensation Law. Nothing in the Unemployment Compensation Law shall be construed to grant an employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

B. Benefits paid to an individual shall be charged against the accounts of the individual's base-period employers on a pro rata basis according to the proportion of the individual's total base-period wages received from each employer, except that no benefits paid to a claimant as extended benefits under the provisions of Section 51-1-48 NMSA 1978 shall be charged to the account of any base-period employer who is not on a reimbursable basis and who is not a governmental entity and, except as the secretary shall by rule prescribe otherwise, in the case of benefits paid to an individual who:

(1) left the employ of a base-period employer who is not on a reimbursable basis voluntarily without good cause in connection with the individual's employment;

(2) was discharged from the employment of a base-period employer who is not on a reimbursable basis for misconduct connected with the individual's employment;

(3) is employed part time by a base-period employer who is not on a reimbursable basis and who continues to furnish the individual the same part-time work while the individual is separated from full-time work for a nondisqualifying reason; or

(4) received benefits based upon wages earned from a base-period employer who is not on a reimbursable basis while attending approved training under the provisions of Subsection E of Section 51-1-5 NMSA 1978.

C. The division shall not charge a contributing or reimbursing base-period employer's account with any portion of benefit amounts that the division can bill to or recover from the federal government as either regular or extended benefits.

D. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto, irrespective of the source of such contributions. The standard rate of contributions payable by each employer shall be five and four-tenths percent.

E. An employer's rate shall not be varied from the standard rate for any calendar year unless, as of the computation date for that year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months, except that:

(1) the provisions of this subsection shall not apply to governmental entities;

(2) subsequent to December 31, 1984, any employing unit that becomes an employer subject to the payment of contributions under the Unemployment Compensation Law or has been an employer subject to the payment of contributions at a standard rate of two and seven-tenths percent through December 31, 1984 shall be

subject to the payment of contributions at the reduced rate of two and seven-tenths percent until, as of the computation date of a particular year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months; and

(3) any individual, type of organization or employing unit that acquires all or part of the trade or business of another employing unit, pursuant to Paragraphs (2) and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has a reduced rate of contribution shall be entitled to the transfer of the reduced rate to the extent permitted under Subsection G of this section.

F. The secretary shall, for the year 1942 and for each calendar year thereafter, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such benefit experience. An employer's rate for any calendar year shall be determined on the basis of the employer's record and the condition of the fund as of the computation date for such calendar year.

An employer may make voluntary payments in addition to the contributions required under the Unemployment Compensation Law, which shall be credited to the employer's account in accordance with department rule. The voluntary payments shall be included in the employer's account as of the employer's most recent computation date if they are made on or before the following March 1. Voluntary payments when accepted from an employer shall not be refunded in whole or in part.

G. In the case of a transfer of an employing enterprise, the experience history of the transferred enterprise as provided in Subsection F of this section shall be transferred from the predecessor employer to the successor under the following conditions and in accordance with the applicable rules of the secretary:

(1) Definitions:

(a) "employing enterprise" is a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters;

(b) "predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise;

(c) "successor" means any individual or any type of organization that acquires an employing enterprise and continues to operate such business entity; and

(d) "experience history" means the experience rating record and reserve account, including the actual contributions, benefit charges and payroll experience of the employing enterprise.

(2) For the purpose of this section, two or more employers who are parties to or the subject of any transaction involving the transfer of an employing enterprise shall be deemed to be a single employer and the experience history of the employing enterprise shall be transferred to the successor employer if the successor employer has acquired by the transaction all of the business enterprises of the predecessor; provided that:

(a) all contributions, interest and penalties due from the predecessor employer have been paid;

(b) notice of the transfer has been given in accordance with the rules of the secretary within four years of the transaction transferring the employing enterprise or the date of the actual transfer of control and operation of the employing enterprise;

(c) in the case of the transfer of an employing enterprise, the successor employer must notify the division of the acquisition on or before the due date of the successor employer's first wage and contribution report. If the successor employer fails to notify the division of the acquisition within this time limit, the division, when it receives actual notice, shall effect the transfer of the experience history and applicable rate of contribution retroactively to the date of the acquisition, and the successor shall pay a penalty of fifty dollars (\$50.00); and

(d) where the transaction involves only a merger, consolidation or other form of reorganization without a substantial change in the ownership and controlling interest of the business entity, as determined by the secretary, the limitations on transfers stated in Subparagraphs (a), (b) and (c) of this paragraph shall not apply. A party to a merger, consolidation or other form of reorganization described in this paragraph shall not be relieved of liability for any contributions, interest or penalties due and owing from the employing enterprise at the time of the merger, consolidation or other form of reorganization.

(3) The applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor has acquired one or more of the several employing enterprises of a predecessor but not all of the employing enterprises of the predecessor and each employing enterprise so acquired was operated by the predecessor as a separate store, factory, shop or other separate employing enterprise and the predecessor, throughout the entire period of the contribution with liability applicable to each enterprise transferred, has maintained and preserved payroll records that, together with records of contribution liability and benefit chargeability, can be separated by the parties from the enterprises retained by the predecessor to the satisfaction of the secretary or the secretary's delegate. A partial experience history transfer will be made only if:

(a) the successor notifies the division of the acquisition, in writing, not later than the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition;

(b) the successor files an application provided by the division that contains the endorsement of the predecessor within thirty days from the delivery or mailing of such application by the division to the successor's last known address; and

(c) the successor files with the application a Form ES-903A or its equivalent with a schedule of the name and social security number of and the wages paid to and the contributions paid for each employee for the three and one-half year period preceding the computation date as defined in Subparagraph (d) of Paragraph (3) of Subsection H of this section through the date of transfer or such lesser period as the enterprises transferred may have been in operation. The application and Form ES-903A shall be supported by the predecessor's permanent employment records, which shall be available for audit by the division. The application and Form ES-903A shall be reviewed by the division and, upon approval, the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation by the predecessor's entire payroll.

H. For each calendar year, adjustments of contribution rates below the standard or reduced rate and measures designed to protect the fund are provided in Paragraphs (1) through (4) of this subsection.

(1) The total assets in the fund and the total of the last annual payrolls of all employers subject to contributions as of the computation date for each year shall be determined. These annual totals are here called "the fund" and "total payrolls". For each year, the "reserve" of each employer qualified under Subsection E of this section shall be fixed by the excess of the employer's total contributions over total benefit charges computed as a percentage of the employer's average payroll reported for contributions. The determination of each employer's annual rate, computed as of the computation date for each calendar year, shall be made by matching the employer's reserve as shown in the reserve column with the corresponding rate in the rate column of the applicable rate schedule of the table provided in Paragraph (4) of this subsection.

(2) Each employer's rate for each calendar year commencing January 1, 1979 or thereafter shall be:

(a) the corresponding rate in schedule 1 of the table provided in Paragraph (4) of this subsection if the fund equals at least three and four-tenths percent of the total payrolls;

(b) the corresponding rate in schedule 2 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than three and four-tenths percent and not less than two and seven-tenths percent of the total payrolls;

(c) the corresponding rate in schedule 3 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two and seven-tenths percent and not less than two percent of the total payrolls;

(d) the corresponding rate in schedule 4 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two percent and not less than one and one-half percent of the total payrolls;

(e) the corresponding rate in schedule 5 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than one and one-half percent and not less than one percent of the total payrolls; or

(f) the corresponding rate in schedule 6 of the table provided in Paragraph (4) of this subsection if the fund has dropped less than one percent of the total payrolls.

(3) As used in this section:

(a) "annual payroll" means the total amount of remuneration from an employer for employment during a twelve-month period ending on a computation date, and "average payroll" means the average of the last three annual payrolls;

(b) "base-period wages" means the wages of an individual for insured work during the individual's base period on the basis of which the individual's benefit rights were determined;

(c) "base-period employers" means the employers of an individual during the individual's base period; and

(d) "computation date" for each calendar year means the close of business on June 30 of the preceding calendar year.

(4) Table of employer reserves and contribution rate schedules:

Employer	Contribution	Contribution	Contribution
Reserve	Schedule 1	Schedule 2	Schedule 3
10.0% and over	0.05%	0.1%	0.6%

9.0%-9.9%	0.1%	0.2%	0.9%
8.0%-8.9%	0.2%	0.4%	1.2%
7.0%-7.9%	0.4%	0.6%	1.5%
6.0%-6.9%	0.6%	0.8%	1.8%
5.0%-5.9%	0.8%	1.1%	2.1%
4.0%-4.9%	1.1%	1.4%	2.4%
3.0%-3.9%	1.4%	1.7%	2.7%
2.0%-2.9%	1.7%	2.0%	3.0%
1.0%-1.9%	2.0%	2.4%	3.3%
0.9%-0.0%	2.4%	3.3%	3.6%
(-0.1%)(-0.5%)	3.3%	3.6%	3.9%
(-0.5%)(-1.0%)	4.2%	4.2%	4.2%
(-1.0%)(-2.0%)	5.0%	5.0%	5.0%
Under (-2.0%)	5.4%	5.4%	5.4%

Employer	Contribution	Contribution	Contribution
Reserve	Schedule 4	Schedule 5	Schedule 6

10.0% and over	0.9%	1.2%	2.7%
9.0%-9.9%	1.2%	1.5%	2.7%
8.0%-8.9%	1.5%	1.8%	2.7%
7.0%-7.9%	1.8%	2.1%	2.7%
6.0%-6.9%	2.1%	2.4%	2.7%
5.0%-5.9%	2.4%	2.7%	3.0%
4.0%-4.9%	2.7%	3.0%	3.3%

3.0%-3.9%	3.0%	3.3%	3.6%
2.0%-2.9%	3.3%	3.6%	3.9%
1.0%-1.9%	3.6%	3.9%	4.2%
0.9%-0.0%	3.9%	4.2%	4.5%
(-0.1%)-(0.5%)	4.2%	4.5%	4.8%
(-0.5%)-(1.0%)	4.5%	4.8%	5.1%
(-1.0%)-(2.0%)	5.0%	5.1%	5.3%
Under (-2.0%)	5.4%	5.4%	5.4%

I. The division shall promptly notify each employer of the employer's rate of contributions as determined for any calendar year pursuant to this section. Such notification shall include the amount determined as the employer's average payroll, the total of all of the employer's contributions paid on the employer's behalf and credited to the employer's account for all past years and total benefits charged to the employer's account for all such years. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

J. The division shall provide each contributing employer, within ninety days of the end of each calendar quarter, a written determination of benefits chargeable to the employer's account. Such determination shall become conclusive and binding upon the employer for all purposes unless, within thirty days after the mailing of the

determination to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such determination, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing in any proceeding involving the employer's contribution liability to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

K. The contributions, together with interest and penalties thereon imposed by the Unemployment Compensation Law, shall not be assessed nor shall action to collect the same be commenced more than four years after a report showing the amount of the contributions was due. In the case of a false or fraudulent contribution report with intent to evade contributions or a willful failure to file a report of all contributions due, the contributions, together with interest and penalties thereon, may be assessed or an action to collect such contributions may be begun at any time. Before the expiration of such period of limitation, the employer and the secretary may agree in writing to an extension thereof and the period so agreed on may be extended by subsequent agreements in writing. In any case where the assessment has been made and action to collect has been commenced within four years of the due date of any contribution, interest or penalty, including the filing of a warrant of lien by the secretary pursuant to Section 51-1-36 NMSA 1978, such action shall not be subject to any period of limitation.

L. The secretary shall correct any error in the determination of an employer's rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer's rate of contribution may have been issued and contributions paid pursuant to the notification. Upon issuance by the division of a corrected rate of contribution, the employer shall have the same rights to review and redetermination as provided in Subsection I of this section.

M. Any interest required to be paid on advances to this state's unemployment compensation fund under Title 12 of the Social Security Act shall be paid in a timely manner as required under Section 1202 of Title 12 of the Social Security Act and shall not be paid, directly or indirectly, by the state from amounts in the state's unemployment compensation fund."

Section 12. Section 51-1-42 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 19, as amended, and as further amended by Section 5 of this act) is repealed and a new Section 51-1-42 NMSA 1978 is enacted 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 the individual's 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 the employer;

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. An individual performing services for an employing unit that 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. An individual performing services for a contractor, subcontractor or agent that is 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 the contractor, subcontractor or agent is itself an employer within the provisions of Subsection E of this section;

E. "employer" includes:

(1) an employing unit that:

(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 that at the time of the 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) an employing unit that acquired all or part of the organization, trade, business or assets of another employing unit and that, if treated as a single unit with the other employing unit or part thereof, would be an employer under Paragraph (1) of this subsection;

(4) an 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) that, 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 that act, to be an "employer" under the Unemployment Compensation Law;

(5) an employing unit that, 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 that has elected to become fully subject to the Unemployment Compensation Law;

(7) an 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; and

(8) an Indian tribe as defined in 26 USCA Section 3306(u) for which service in employment is performed;

F. "employment":

(1) means any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) means 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) means 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) means 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 the election;

(5) means 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) the individual has been and will continue to be free from control or direction over the performance of the services both under the individual's contract of service and in fact;

(b) the service is either outside the usual course of business for which the 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) the 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) means service performed after December 31, 1977 by an individual in agricultural labor as defined in Subsection Q of this section if:

(a) the service is performed for an employing unit that: 1) paid remuneration in cash of twenty thousand dollars (\$20,000) or more to individuals in that 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 the weeks were consecutive, and regardless of whether the individuals were employed at the same time;

(b) the 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 federal Immigration and Nationality Act; and

(c) for purposes of this paragraph, an 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 the crew leader: 1) if the crew leader meets the requirements of a crew leader as defined in Subsection L of this section; or 2) substantially all the members of the crew operate or maintain mechanized agricultural equipment that is provided by the crew leader; and 3) the individuals performing the 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) means 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) means 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) means 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 that 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 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 the 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) means, 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) means service performed in the employ of an Indian tribe if:

(a) the service is excluded from "employment" as defined in 26 USCA Section 3306(c) solely by reason of 26 USCA Section 3306(c)(7); and

(b) the service is not otherwise excluded from employment pursuant to the Unemployment Compensation Law;

(12) does not include:

(a) service performed in the employ of: 1) a church or convention or association of churches; or 2) an organization that is operated primarily for religious purposes and that 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 of 1986, 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 that 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 the individual for the 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 the 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 the work relief or work training;

(l) service performed by an individual who is enrolled at a nonprofit or public educational institution that 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 the institution that 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 any employer;

(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 the service is performed by a student who is enrolled and is regularly attending classes at the school, college or university;

(p) service performed by an individual for a fixed or contract fee officiating at a sporting event that 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

(13) 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 the individual constitute employment, all the services of the individual for the 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 the individual do not constitute employment, then none of the services of the individual for the 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 the individual.

This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing the individual where any of such service is excepted by Subparagraph (f) of Paragraph (12) 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 the individual performs no services and with respect to which no wages are payable to the individual and during which the individual is not engaged in self-employment or receives an award of back pay for loss of employment. The secretary shall prescribe by rule 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 federal Migrant and Seasonal Agricultural Worker Protection Act;

(2) furnishes individuals to perform services in agricultural labor for any other person;

(3) pays, either on the crew leader's own behalf or on behalf of such other person, the individuals so furnished by the crew leader for service in agricultural labor; and

(4) has not entered into a written agreement with the other person for whom the crew leader furnishes individuals in agricultural labor that the individuals will be the employees of the other person;

M. "week" means such period of seven consecutive days, as the secretary may by rule prescribe. The secretary may by rule prescribe that a week shall be deemed to be "in", "within" or "during" the benefit year that 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 an 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 the individual's last preceding benefit year; provided that at the time of filing such a claim the individual has been paid the wage 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 a person, in connection with cultivating the soil or in connection with raising or harvesting an 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 the farm and its tools and equipment, if the major part of the 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 the 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 B of Section 51-1-13 NMSA 1978 or Subsection E of Section 51-1-59 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 rules 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 percent of the state's average annual earnings computed by the division by dividing total wages reported to the division 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 the employ of an employing unit under a plan or system established by the employing unit that makes provision for individuals in its employ generally or for a class or classes of individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any payment, on account of:

(a) retirement if the payments are made by an employer to or on behalf of an 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 the employee or class of employees and does not include any payments that

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 the 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 the 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 the individual's employing unit and has not the right under the provisions of the plan or system or policy of insurance providing for the death benefit to assign the benefit, or to receive a cash consideration in lieu of the benefit either upon the individual's withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of the individual's service with the employing unit;

(3) remuneration for agricultural labor paid in any medium other than cash;

(4) a 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) a payment made, or benefit furnished to or for the benefit of an employee if at the time of the payment or such furnishing it is reasonable to believe that the employee will be able to exclude the payment or benefit from income under Section 129 of the federal Internal Revenue Code of 1986;

(6) a payment made by an employer to a survivor or the estate of a former employee after the calendar year in which the employee died;

(7) a payment made to, or on behalf of, an employee or the employee's beneficiary under an arrangement to which Section 408(p) of the federal Internal Revenue Code of 1986 applies, other than any elective contributions under Paragraph (2)(A)(i) of that section;

(8) a payment made to or for the benefit of an employee if at the time of the payment it is reasonable to believe that the employee will be able to exclude the payment from income under Section 106 of the federal Internal Revenue Code of 1986; or

(9) the value of any meals or lodging furnished by or on behalf of the employer if at the time the benefit is provided it is reasonable to believe that the employee will be able to exclude such items from income under Section 119 of the federal Internal Revenue Code of 1986."

Section 13. APPROPRIATION.--Two million five hundred ninety-two thousand four hundred one dollars (\$2,592,401) is appropriated from the Reed Act distribution fund, consisting of funds made available to the state of New Mexico on March 13, 2002 pursuant to Section 209 of the federal Temporary Extended Unemployment Compensation Act of 2002, to the unemployment compensation administration fund for expenditure in fiscal years 2004 through 2007 to implement the provisions of this act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the Reed Act distribution fund.

Section 14. REPEAL.--Laws 2000, Chapter 3, Sections 1 and 2 are repealed.

Section 15. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 5 and 13 of this act is April 1, 2003.

B. The effective date of the provisions of Sections 2 and 6 of this act is January 1, 2004.

C. The effective date of the provisions of Sections 8 through 12 of this act is the earliest of the following:

(1) June 30, 2007; or

(2) the date that the unemployment compensation fund is less than three and three-fourths percent of total payrolls pursuant to the computation provided in Paragraph (1) of Subsection I of Section 51-1-11 NMSA 1978.

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

WITH EMERGENCY CLAUSE

SIGNED MARCH 19, 2003

CHAPTER 48

CHAPTER 48, LAWS 2003

AN ACT

RELATING TO JUVENILE JUSTICE; ENACTING THE INTERSTATE COMPACT FOR JUVENILES; REPEALING SECTIONS OF THE NMSA 1978.

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

The Interstate Compact for Juveniles is enacted into law and entered into on behalf of New Mexico with any and all other states legally joining therein in a form substantially as follows:

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I - Purpose

A. The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in doing so have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

B. It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to:

(1) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(2) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(3) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(4) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(5) provide for the effective tracking and supervision of juveniles;

(6) equitably allocate the costs, benefits and obligations of the compacting states;

(7) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;

(8) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(9) establish procedures to resolve pending charges against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(10) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial and legislative branches and juvenile and criminal justice administrators;

(11) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(12) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in that activity; and

(13) coordinate the implementation and operation of the compact with the Interstate Compact on the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

C. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact.

D. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II - Definitions

As used in this compact, unless the context clearly requires a different construction:

A. "bylaws" means those bylaws established by the interstate commission for its governance or for directing or controlling its actions or conduct;

B. "commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact;

C. "compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact;

D. "compacting state" means any state that has enacted the enabling legislation for this compact;

E. "court" means any court having jurisdiction over delinquent, neglected or dependent children;

F. "deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact and who is responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and the policies adopted by the state council under this compact;

G. "interstate commission" means the interstate commission for juveniles created by Article III of this compact;

H. "juvenile" means a person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(1) an accused delinquent, who is a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) an adjudicated delinquent, who is a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) an accused status offender, who is a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) an adjudicated status offender, who is a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) a non-offender, who is a person in need of supervision who has not been accused or adjudicated as a status offender or delinquent;

I. "noncompacting state" means any state that has not enacted the enabling legislation for this compact;

J. "probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states;

K. "rule" means a written statement by the interstate commission promulgated pursuant to Article VI of this compact that is of general applicability, that implements, interprets or prescribes a policy or provision of the compact or an organizational, procedural or practice requirement of the commission, and that has the force and effect of statutory law in a compacting state. "Rule" includes the amendment, repeal or suspension of an existing rule; and

L. "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa and the Northern Marianas Islands.

ARTICLE III - Interstate Commission for Juveniles

A. The compacting states hereby create the "interstate commission for juveniles". The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the "state council for interstate juvenile supervision" created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the interstate commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations. Noncommissioner members shall include a member of the national organizations of governors, legislators, state chief justices, attorneys general, a member of the interstate compact for adult offender supervision, a member of the interstate compact for the placement of children,

juvenile justice and juvenile corrections officials and crime victims. All noncommissioner members of the interstate commission shall be ex-officio, nonvoting members. The interstate commission may provide in its bylaws for additional ex-officio, nonvoting members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

E. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The interstate commission shall establish an executive committee, which shall include commission officers, members and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and amendments to the compact. The executive committee shall oversee the day-to-day activities managed by an executive director and interstate commission staff, administer enforcement and compliance with the provisions of the compact, bylaws and rules, and perform other duties as directed by the interstate commission or set forth in the bylaws.

G. Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to

the public when a determination is made by a two-thirds' vote that an open meeting would be likely to:

(1) relate solely to the interstate commission's internal personnel practices and procedures;

(2) disclose matters specifically exempted from disclosure by statute;

(3) disclose trade secrets or commercial or financial information that is privileged or confidential;

(4) involve accusing a person of a crime or formally censuring a person;

(5) disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) disclose investigative records compiled for law enforcement purposes;

(7) disclose information contained in or related to examination reports, operating reports or condition reports prepared by, prepared on behalf of or prepared for the use of the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;

(8) disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(9) specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to the provisions of Subsection I of this article, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and shall reference each relevant provision set forth in Subsection I of this article. The interstate commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken and the reasons therefore, including a description of each of the views expressed on an item and the record of a roll call vote. All documents considered in connection with an action shall be identified in the minutes.

K. The interstate commission shall collect standardized data concerning the interstate movement of juveniles, as directed through its rules, which shall specify the data to be collected, the means of collection, data exchange and reporting requirements. The methods of data collection, data exchange and reporting shall,

insofar as it is reasonably possible, conform to up-to-date technology and coordinate with information functions used by the appropriate repository of records.

ARTICLE IV -- Powers and Duties of the Interstate Commission

The interstate commission shall:

- A. provide for dispute resolution among compacting states;
- B. promulgate rules to effect the purposes and obligations enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
- C. oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission;
- D. enforce compliance with compact provisions, the rules promulgated by the interstate commission and bylaws, using all necessary and proper means, including the use of judicial process;
- E. establish and maintain offices that shall be located within one or more of the compacting states;
- F. purchase and maintain insurance and bonds;
- G. borrow, accept, hire or contract for personnel services;
- H. establish and appoint committees and hire staff that it deems necessary for carrying out its functions, including an executive committee that shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;
- I. elect or appoint officers, attorneys, employees, agents or consultants and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel;
- J. accept any and all donations and grants of money, equipment, supplies, materials and services and to receive, utilize and dispose of same;
- K. lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal or mixed;
- L. sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

M. establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;

N. sue and be sued;

O. adopt a seal and bylaws governing the management and operation of the interstate commission;

P. perform functions as may be necessary or appropriate to achieve the purposes of this compact;

Q. report annually to the legislatures, governors, judiciary and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. The reports shall also include recommendations that may have been adopted by the interstate commission;

R. coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in that activity;

S. establish uniform standards for the reporting, collecting and exchanging of data; and

T. maintain its corporate books and records in accordance with the bylaws.

ARTICLE V - Organization and Operation of the Interstate Commission

A. The interstate commission shall, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:

(1) establishing the fiscal year of the interstate commission;

(2) establishing an executive committee and other committees as may be necessary;

(3) providing for the establishment of committees governing general or specific delegation of any authority or function of the interstate commission;

(4) providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of those meetings;

(5) establishing the titles and responsibilities of the officers of the interstate commission;

(6) providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations;

(7) providing "start-up" rules for initial administration of the compact; and

(8) establishing standards and procedures for compliance and technical assistance in carrying out the compact.

B. The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the interstate commission. The officers elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

C. The interstate commission, through its executive committee, shall appoint or retain an executive director, upon terms and conditions and for compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, shall not be a member and shall hire and supervise other staff as may be authorized by the interstate commission.

D. The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that the person shall not be protected from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of the person.

E. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of the person's employment or duties for acts, errors or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees and agents. Nothing in this subsection shall be construed to protect the person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of the person.

F. The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the attorney general of the state represented by a commissioner of a compacting state, shall defend the commissioner or the commissioner's representatives or employees in a civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of the person.

G. The interstate commission shall indemnify and hold the commissioner of a compacting state, the commissioner's representatives or employees or the interstate commission's representatives or employees, harmless in the amount of a settlement or judgment obtained against a person arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities; provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of the person.

ARTICLE VI - Rulemaking Functions of the Interstate Commission

A. The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act", 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or other administrative procedures act, as the interstate commission deems appropriate, consistent with due process requirements under the United States constitution as now or hereafter interpreted by the United States supreme court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the interstate commission.

C. When promulgating a rule, the interstate commission shall, at a minimum:

(1) publish the proposed rule's entire text stating the reasons for that proposed rule;

(2) allow and invite persons to submit written data, facts, opinions and arguments, which information shall be added to the record and be made publicly available;

(3) provide an opportunity for an informal hearing if petitioned by ten or more persons; and

(4) promulgate a final rule and its effective date, if appropriate, based on input from state or local officials or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, an interested person to file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of the rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause the rule to have no further force and effect in any compacting state.

F. The existing rules governing the operation of the interstate compact on juveniles superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

G. Upon determination by the interstate commission that a state of emergency exists, it may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rule making procedures provided hereunder shall be retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

ARTICLE VII - Oversight, Enforcement and Dispute Resolution by The Interstate Commission

A. The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor activities being administered in noncompacting states that may significantly affect compacting states.

B. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In a judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the

interstate commission, it shall be entitled to receive all service of process in the proceeding and shall have standing to intervene in the proceeding for all purposes.

C. The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

D. The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes between the compacting states.

E. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII - Finance

A. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff, which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states that governs the assessment.

C. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE IX - The State Council

Each member state shall create a "state council for interstate juvenile supervision". While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial and executive branches of government, victims groups and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state, including development of policy concerning operations and procedures of the compact within that state.

ARTICLE X - Compacting States, Effective Date and Amendment

A. Any state is eligible to become a compacting state. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004 or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of noncompacting states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

B. The interstate commission may propose amendments to the compact for enactment by the compacting states. An amendment shall not become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI - Withdrawal, Default, Termination and Judicial Enforcement

A. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law. The effective date of withdrawal is the effective date of the repeal. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. Reinstatement following withdrawal of a compacting state shall occur upon the withdrawing state reenacting the compact or upon a later date as determined by the interstate commission.

B. If the interstate commission determines that a compacting state has at any time defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(1) remedial training and technical assistance as directed by the interstate commission;

(2) alternative dispute resolution;

(3) fines, fees and costs in amounts as are deemed to be reasonable as fixed by the interstate commission; and

(4) suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature and the state council.

C. The grounds for default include failure of a compacting state to perform obligations or responsibilities imposed upon it by this compact, the bylaws or duly promulgated rules and any other grounds designated in commission bylaws and rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

D. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature and the state council of the termination.

E. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including any obligations that extend beyond the effective date of termination.

F. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

G. Reinstatement following termination of a compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

H. The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation, including reasonable attorneys fees.

I. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII - Severability and Construction

A. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII - Binding Effect of Compact and Other Laws

A. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact. All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

B. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

C. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

D. Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding the meaning or interpretation.

E. In the event a provision of this compact exceeds the constitutional limits imposed on the legislature of a compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by the provision upon the interstate commission shall be ineffective and the obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency to which the obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

ARTICLE XIV - Repeal

Sections 32A-10-1 through 32A-10-8 NMSA 1978 (being Laws 1973, Chapter 238, Sections 1 through 8, as amended) are repealed.

HOUSE BILL 46

CHAPTER 49

CHAPTER 49, LAWS 2003

AN ACT

RELATING TO INFORMATION TECHNOLOGY; CLARIFYING PROVISIONS OF THE INFORMATION TECHNOLOGY MANAGEMENT ACT; REVISING THE MEMBERSHIP OF THE INFORMATION TECHNOLOGY COMMISSION; EXTENDING THE TERMINATION DATE FOR THE COMMISSION; PROVIDING PENALTIES FOR NONCOMPLIANCE BY PUBLIC OFFICIALS OR EMPLOYEES; 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 15-1C-1 NMSA 1978 (being Laws 1999, Chapter 16, Section 1) is amended to read:

"15-1C-1. SHORT TITLE.--Chapter 15, Article 1C NMSA 1978 may be cited as the "Information Technology Management Act"."

Section 2. Section 15-1C-2 NMSA 1978 (being Laws 1999, Chapter 16, Section 2) is amended to read:

"15-1C-2. PURPOSE.--The purpose of the Information Technology Management Act is to:

- A. coordinate policies and procedures for e-government;

B. assess and inventory current information technology services and resources;

C. coordinate central and individual executive agency information technology in a manner that ensures compliance with state information architecture and that ensures cost-effective and efficient information and communication systems and resources are being used by executive agencies;

D. develop a three-year state information technology strategic plan for information and communication management that is updated annually by the information technology commission; and

E. promote data sharing between governmental entities and provide a mechanism for information technology expertise to be shared between the branches of state government and local governments."

Section 3. Section 15-1C-3 NMSA 1978 (being Laws 1999, Chapter 16, Section 3) is amended to read:

"15-1C-3. DEFINITIONS.--As used in the Information Technology Management Act:

A. "agency plan" means an executive agency's annual information technology plan;

B. "commission" means the information technology commission;

C. "executive agency" means a state agency of the executive branch of government;

D. "e-government" means the provision of access to government information and services via the internet that complies with state information architecture;

E. "information technology" means computer and voice and data communication software and hardware, including imaging systems, terminals and communications networks and facilities, staff information systems services and professional services contracts for information systems services;

F. "information technology project" means the purchase, replacement, development or modification of a hardware or software system;

G. "office" means the office of the chief information officer;

H. "state information architecture" means a logically consistent set of principles, policies and standards that guides the engineering of state government's

information technology systems and infrastructure in a way that ensures alignment with state government's business needs; and

I. "state information technology strategic plan" means the information technology planning document for the state that spans a three-year period."

Section 4. Section 15-1C-4 NMSA 1978 (being Laws 1999, Chapter 16, Section 4) is amended to read:

"15-1C-4. COMMISSION CREATED--MEMBERSHIP.--

A. The "information technology commission" is created. The commission consists of fifteen members as follows:

(1) five members appointed by the governor, three of whom are from agencies whose primary funding is not from internal service funds;

(2) one staff member with telecommunications regulatory experience appointed by the chairman of the public regulation commission;

(3) two members representing education, one appointed by the commission on higher education and one appointed by the president of the state board of education;

(4) two members from the national laboratories;

(5) three members appointed by the governor to represent the public with information technology and management experience, but who are not employees of the state or a political subdivision of the state and who do not have any financial interest in the state information systems or state contracts. The public members shall serve for staggered three-year terms; and

(6) two members representing local government, one appointed by the New Mexico association of counties and one appointed by the New Mexico municipal league.

B. Additionally, the following advisory members may serve on the commission:

(1) two members from the judicial information systems council appointed by the chairman of that council;

(2) one staff member from the legislative council service and one staff member from the legislative finance committee, appointed by their respective directors; and

(3) the chief information officer.

C. Members of the commission, except the three public members appointed by the governor, may select designees to represent them and vote on their behalf.

D. The members of the commission who are not supported by public money, or their designees, may receive per diem and mileage pursuant to the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

E. The commission shall elect a chairman and vice chairman from the active membership of the commission for two-year terms.

F. The commission shall meet at least semiannually and may meet at the call of the chairman or a majority of the members."

Section 5. Section 15-1C-5 NMSA 1978 (being Laws 1999, Chapter 16, Section 5) is amended to read:

"15-1C-5. COMMISSION--POWERS AND DUTIES.--The commission shall:

A. adopt and promulgate rules that delineate the state information architecture as a framework for the state information technology strategic plan;

B. adopt and promulgate other rules necessary for the administration of the Information Technology Management Act and the conduct of the affairs of the office;

C. develop and annually review strategies for identifying information technology projects that impact multiple agencies and ensure that those information technology projects are appropriately designed and developed;

D. provide information technology planning guidelines for agency annual plans;

E. update state information architecture and the state information technology strategic plan annually, including identifying areas of noncompliance with the state information technology strategic plan;

F. submit proposed rules to the information technology oversight committee for its review prior to adoption;

G. review and comment on information technology appropriation requests presented to it by the chief information officer and report to the legislative finance committee and the information technology oversight committee regarding those requests;

H. establish policies, procedures and rules to ensure that information technology projects satisfy criteria established by the commission and are phased in, that funding is released in phases and that an executive agency's authority to proceed to the next phase of an information technology project is contingent upon successful completion of the prior phase. The policies, procedures and rules shall require the identification of one or more specific deliverables for each phase; and

I. adopt and promulgate rules to provide for mediation of disputes between an executive agency and the chief information officer pursuant to Paragraph (2) or (4) of Subsection B of Section 15-1C-7 NMSA 1978."

Section 6. Section 15-1C-6 NMSA 1978 (being Laws 1999, Chapter 16, Section 6) is amended to read:

"15-1C-6. OFFICE OF THE CHIEF INFORMATION OFFICER CREATED--
ADMINISTRATIVE ATTACHMENT--CHIEF INFORMATION OFFICER--
QUALIFICATIONS--STAFF.--

A. The "office of the chief information officer" is created. The office is administratively attached to the office of the governor.

B. The head of the office is the "chief information officer", who is appointed by the governor with the advice and consent of the senate. The chief information officer shall have a minimum of seven years' experience in the management of a large information technology enterprise. The chief information officer serves at the pleasure of the governor.

C. The chief information officer may hire staff as necessary to carry out the provisions of the Information Technology Management Act. Staff of the office are subject to the provisions of the Personnel Act."

Section 7. Section 15-1C-7 NMSA 1978 (being Laws 1999, Chapter 16, Section 7) is amended to read:

"15-1C-7. OFFICE--POWERS AND DUTIES.--

A. The office may:

(1) obtain information, documents and records that are not confidential by law from an executive agency as needed to carry out the provisions of the Information Technology Management Act;

(2) enter into contracts;

(3) perform reviews of executive agency information technology projects or information technology management processes; and

(4) when requested, offer assistance or expertise to the judiciary, legislature, institutions of higher education, counties, municipalities, public school districts and other political subdivisions of the state.

B. The office shall:

(1) review agency plans and make recommendations to the commission regarding prudent allocation of information technology resources; reduction of data, hardware and software redundancy; and improving system interoperability and data accessibility between agencies;

(2) approve executive agency information technology requests for proposals and contract vendor requests that are subject to the Procurement Code, prior to final approval;

(3) recommend procedures and rules to the commission for improved oversight of information technology procurement;

(4) approve executive agency information technology contracts and amendments to those contracts, including emergency procurements, sole source contracts and price agreements, prior to final execution;

(5) verify compliance with state information architecture and the state information technology strategic plan before approving documents referred to in Paragraphs (2) and (4) of this subsection;

(6) monitor executive agency compliance with its agency plan, the state information technology strategic plan and state information architecture and report to the governor, the commission and executive agency management on noncompliance;

(7) review information technology cost recovery mechanisms and information systems rate structures of executive agencies and make recommendations to the commission;

(8) provide technical support to executive agencies in the development of their agency plans;

(9) review appropriation requests related to executive agency information technology requests to ensure compliance with agency plans and the state information technology strategic plan and make written recommendations to the department of finance and administration, the legislative finance committee, the information technology oversight committee and the commission by November 30 of each year;

(10) provide oversight of information technology projects, including ensuring adequate risk management and disaster recovery practices and monitoring compliance with strategies developed by the commission for information technology projects that impact multiple agencies; and

(11) perform any other function assigned by the commission."

Section 8. Section 15-1C-8 NMSA 1978 (being Laws 1999, Chapter 16, Section 8) is amended to read:

"15-1C-8. AGENCY PLANS--CERTIFICATION--NONCOMPLIANCE--PENALTIES.--

A. Agency plans shall:

(1) be consistent with the state information technology strategic plan;

(2) demonstrate that the executive agency has developed information technology objectives consistent with the agency plan, the state information technology strategic plan and the state information architecture;

(3) show appropriate coordination with other executive agencies to improve customer service and reduce redundant data, hardware and software;

(4) include information about information technology objectives, inventories, data and expenditures for each fiscal year;

(5) demonstrate consistency with appropriations and budgets approved by the department of finance and administration; and

(6) include any other components required by the office or the commission.

B. Prior to making information technology purchases, regardless of the funding source, an executive agency shall certify to the commission, pursuant to rules adopted by the commission, that its proposed information technology purchases are consistent with its agency plan, the state information architecture adopted by the commission and the state information technology strategic plan. The commission or the office may delay or stop a purchase if it believes that the proposed purchase may not meet the requirements of the agency plan, state information architecture or the state information technology strategic plan.

C. A person who makes an information technology purchase or sale and intentionally fails to comply with the certification requirements set forth in Subsection B of this section is in violation of the provisions of that subsection and:

(1) is guilty of a misdemeanor, as provided in Section 31-19-1 NMSA 1978;

(2) is subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation; and

(3) shall be individually liable to the state for the amount of the purchase or sale."

Section 9. A new section of the Information Technology Management Act is enacted to read:

"INFORMATION TECHNOLOGY PLANS AND PROJECTS--COMMISSION ON HIGHER EDUCATION--STATE DEPARTMENT OF PUBLIC EDUCATION--JUDICIAL BRANCH--LEGISLATIVE BRANCH.--

A. The commission on higher education, the state department of public education, the judicial branch of government and the legislative branch of government are encouraged to submit their annual information technology plans to the office, the legislative finance committee and the information technology oversight committee for review and comment by those entities.

B. The commission on higher education, the state department of public education, the judicial branch of government and the legislative branch of government are encouraged to submit periodic status reports regarding information technology projects to the office and the legislative finance committee for review and comment.

C. The commission on higher education, the state department of public education, the judicial branch of government and the legislative branch of government are encouraged, but not required, to certify to the commission that their information technology projects are consistent with their information technology plans."

Section 10. Section 15-1C-9 NMSA 1978 (being Laws 1999, Chapter 16, Section 9) is amended to read:

"15-1C-9. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The information technology commission is terminated July 1, 2009 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of the Information Technology Management Act until July 1, 2010."

Section 11. Section 15-1C-11 NMSA 1978 (being Laws 1999, Chapter 16, Section 11) is amended to read:

"15-1C-11. OVERSIGHT COMMITTEE DUTIES.--

A. The information technology oversight committee shall hold one organizational meeting each year to develop a work plan and budget for the ensuing interim. The work plan and budget shall be submitted to the New Mexico legislative council for approval.

B. The committee shall:

(1) monitor the work of the information technology commission and the office of the chief information officer, including reviewing the commission's rules setting out the policies, standards, procedures and guidelines for information architecture and development projects and the annual update of the state information technology strategic plan;

(2) oversee the implementation of the Information Technology Management Act, review the work of the judicial information systems council and the judicial information division and oversee any other state-funded systems;

(3) meet on a regular basis to receive and evaluate periodic reports from the information technology commission and office of the chief information officer; and

(4) perform such other related duties as assigned by the legislative council.

C. The committee shall make a report of its findings and recommendations for the consideration of each session of the legislature. The report and any suggested legislation shall be made available to the legislative council by December 31 preceding that session."

Section 12. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE APPROPRIATIONS AND FINANCE

COMMITTEE SUBSTITUTE FOR HOUSE BILL 67,

WITH EMERGENCY CLAUSE, SIGNED MARCH 19, 2003

CHAPTER 50

CHAPTER 50, LAWS 2003

AN ACT

RELATING TO TAXATION; AMENDING THE LOCAL HOSPITAL GROSS RECEIPTS TAX ACT TO ADD SAN JUAN COUNTY AS A COUNTY ELIGIBLE TO IMPOSE THE TAX; DECLARING AN EMERGENCY.

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

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);

(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);

(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 property tax year of more than one hundred fifty million dollars (\$150,000,000) but less than one hundred seventy-five million dollars (\$175,000,000);

(7) an H class county; or

(8) a class A county having a population of less than one hundred fifteen thousand according to the 2000 federal decennial census or any subsequent federal decennial census and having a net taxable value for rate-setting purposes for the 2001 property tax year or any subsequent year of more than three billion dollars (\$3,000,000,000);

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 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 a 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), (6), (7) or (8) 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) or (8) 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 forty 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 in a county described in Paragraph (2), (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978 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 revenue 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) or (8) 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 health care facilities contract, lease or management contract with the county;

(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; and

(5) if the governing body of a county described in Paragraph (7) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after January 1, 2002, the governing body shall dedicate the revenue for acquisition, lease, renovation or equipping of a hospital facility or for operation and maintenance of

that facility, whether operated and maintained by the county or by another party pursuant to a health care facilities contract, lease or management contract with the county.

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 vote 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 vote 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 on as a separate question in a general election or in any special election called for that purpose by the governing body. A special election on 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 an election called for that purpose.

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

HOUSE BILL 214, WITH EMERGENCY

CLAUSE AND CERTIFICATE OF

CORRECTION, SIGNED MARCH 19, 2003

CHAPTER 51

CHAPTER 51, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; CLARIFYING RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS; CHANGING PROVISIONS APPLYING TO COMMERCIAL DRIVER'S LICENSES; COMPLYING WITH FEDERAL LAW REGARDING RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS AND PROHIBITED BLOOD OR BREATH ALCOHOL CONCENTRATIONS FOR COMMERCIAL DRIVERS; REVISING FEES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE MOTOR VEHICLE CODE; DECLARING AN EMERGENCY.

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

Section 1. Section 66-5-52 NMSA 1978 (being Laws 1989, Chapter 14, Section 1, as amended) is amended to read:

"66-5-52. SHORT TITLE.--Sections 66-5-52 through

66-5-72 NMSA 1978 may be cited as the "New Mexico Commercial Driver's License Act".

Section 2. Section 66-5-54 NMSA 1978 (being Laws 1989, Chapter 14, Section 3, as amended) is amended to read:

"66-5-54. DEFINITIONS.--As used in the New Mexico Commercial Driver's License Act:

A. "commerce" means:

(1) trade, traffic or transportation within the jurisdiction of the United States between a place in New Mexico and a place outside of New Mexico, including a place outside of the United States; and

(2) trade, traffic or transportation in the United States that affects any trade, traffic or transportation described in Paragraph (1) of this subsection;

B. "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(1) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(2) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(3) is designed to transport sixteen or more passengers, including the driver; or

(4) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law;

C. "employee" means an operator of a commercial motor vehicle, including full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers; and independent owner-operator contractors, while in the course of operating a commercial motor vehicle, who is either directly employed by or under lease to an employer;

D. "employer" means a person, including the United States, a state and a political subdivision of a state or their agencies or instrumentalities, who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle;

E. "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit or units and any load thereon;

F. "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle;

G. "out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican or local jurisdiction that a

driver, a commercial motor vehicle or a motor carrier operation is temporarily prohibited from operating;

H. "railroad-highway grade crossing violation" means a violation of a provision of Section 66-7-341 or 66-7-343 NMSA 1978 or a violation of federal or local law or rule pertaining to stopping at or crossing a railroad-highway grade crossing; and

I. "serious traffic violation" means conviction of any of the following if committed when operating a commercial motor vehicle:

(1) speed of fifteen miles or more per hour above the posted limits;

(2) reckless driving as defined by Section 66-8-113 NMSA 1978 or a municipal ordinance or the law of another state;

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

(4) injury to pregnant woman by vehicle as defined in Section 66-8-101.1 NMSA 1978 or a municipal ordinance or the law of another state; or

(5) any other violation of law relating to motor vehicle traffic control, other than a parking violation, that the secretary determines by regulation to be a serious traffic violation. "Serious traffic violation" does not include a vehicle weight or vehicle defect violation."

Section 3. Section 66-5-58 NMSA 1978 (being Laws 1989, Chapter 14, Section 7, as amended) is amended to read:

"66-5-58. EMPLOYER RESPONSIBILITY.--An employer shall not knowingly allow, require, permit or authorize a driver to drive a commercial motor vehicle during a period in which:

A. the driver has a driver's license suspended, revoked or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state or has been disqualified from driving a commercial motor vehicle;

B. the driver has more than one driver's license as of the effective date of the provisions of the New Mexico Commercial Driver's License Act;

C. the driver, the commercial motor vehicle the driver is driving or the motor carrier operation of the employer is subject to an out-of-service order; or

D. the driver has been convicted of a railroad-highway grade crossing violation."

Section 4. Section 66-5-59 NMSA 1978 (being Laws 1989, Chapter 14, Section 8) is amended to read:

"66-5-59. COMMERCIAL DRIVER'S LICENSE REQUIRED.--

A. A person may not drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle the person is driving, except when driving under a commercial driver's instruction permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven.

B. A person may not drive a commercial motor vehicle while the person's driving privilege is suspended, revoked or canceled or while subject to a disqualification or in violation of an out-of-service order.

C. A person who is a resident of this state for at least thirty days may not drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

D. A person may not drive a commercial motor vehicle in violation of an out-of service order."

Section 5. Section 66-5-68 NMSA 1978 (being Laws 1989, Chapter 14, Section 17, as amended) is amended to read:

"66-5-68. DISQUALIFICATION.--

A. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than one year if the person:

(1) refuses to submit to a chemical test when requested pursuant to the provisions of the Implied Consent Act; or

(2) is convicted of a violation of:

(a) driving a commercial motor vehicle under the influence of intoxicating liquor or drugs in violation of Section 66-5-68.1 NMSA 1978, Section 66-8-102 NMSA 1978, an ordinance of a municipality of this state or the law of another state;

(b) leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of Section 66-7-201 NMSA 1978 or an ordinance of a municipality of this state or the law of another state; or

(c) using a commercial motor vehicle in the commission of any felony.

B. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years if any of the violations specified in Subsection A of this section occur while transporting a hazardous material required to be placarded.

C. The department shall disqualify a person from driving a commercial motor vehicle for life if convicted of two or more violations of any of the offenses specified in Subsection A of this section, or any combination of those offenses, arising from two or more separate incidents, but the secretary may issue regulations establishing guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to a period of not less than ten years. This subsection applies only to those offenses committed after July 1, 1989.

D. The department shall disqualify a person from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.

E. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations or one hundred twenty days if convicted of three serious traffic violations, if the violations were committed while driving a commercial motor vehicle, arising from separate incidents occurring within a three-year period.

F. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than one hundred eighty days nor more than two years if the person is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded pursuant to the federal Hazardous Materials Transportation Act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years nor more than five years if, during any ten-year period, the person is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded pursuant to that act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver.

G. When a person is disqualified from driving a commercial motor vehicle, any commercial driver's license held by that person is invalidated without a separate proceeding and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed.

H. The department shall disqualify a person from driving a commercial motor vehicle:

(1) for a period of not less than sixty days if the person is convicted of a first violation of a railroad-highway grade crossing violation;

(2) for not less than one hundred twenty days if, during any three-year period, the person is convicted of a second railroad-highway grade crossing violation in a separate incident; and

(3) for not less than one year if, during any three-year period, the person is convicted of a third or subsequent railroad-highway grade crossing violation in a separate incident.

I. After disqualifying, suspending, revoking or canceling a commercial driver's license, the department shall, within ten days, update its records to reflect that action. After disqualifying, suspending, revoking or canceling a nonresident commercial driver's privileges, the department shall, within ten days, notify the licensing authority of the state that issued the commercial driver's license.

J. For purposes of this section, the term "convicted" includes a license revocation pursuant to the Implied Consent Act or an implied consent act of another state."

Section 6. Section 66-5-71 NMSA 1978 (being Laws 1998, Chapter 17, Section 5, as amended) is amended to read:

"66-5-71. PENALTIES FOR VIOLATION OF OUT-OF-SERVICE ORDERS.--

A. A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than one thousand one hundred dollars (\$1,100) or more than two thousand seven hundred fifty dollars (\$2,750), in addition to disqualification as provided in Subsection C of this section.

B. An employer who is convicted of a violation of Subsection C of Section 66-5-58 NMSA 1978 shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars (\$2,750) or more than eleven thousand dollars (\$11,000).

C. A driver who is convicted of violating an out-of-service order shall be disqualified for:

(1) not less than ninety days or more than one year if the driver is convicted of a first violation of an out-of-service order;

(2) not less than one year or more than five years if, during any ten-year period, the driver is convicted of two violations of out-of-service orders in separate incidents; and

(3) not less than three years or more than five years if, during any ten-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents."

Section 7. A new section of the New Mexico Commercial Driver's License Act, Section 66-5-72 NMSA 1978, is enacted to read:

"66-5-72. EMPLOYER PENALTIES FOR RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS.--An employer who is convicted of a violation of Subsection D of Section 66-5-58 NMSA 1978 shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation."

Section 8. Section 66-7-341 NMSA 1978 (being Laws 1978, Chapter 35, Section 445) is repealed and a new Section 66-7-341 NMSA 1978 is enacted to read:

"66-7-341. RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS--ALL DRIVERS.--

A. A person driving a vehicle approaching a railroad-highway grade crossing shall:

(1) obey traffic control devices, crossing gates or barriers or the directions of an enforcement official at the crossing;

(2) stop not more than fifty feet and not less than fifteen feet from the nearest rail of a crossing if:

(a) a train is moving through or blocking the crossing;

(b) a train is plainly visible and approaching the crossing within hazardous proximity to the crossing;

(c) the sound of a train's warning signal can be heard; or

(d) a traffic control device, crossing gate, barrier or light or an enforcement official signals the driver to stop; and

(3) proceed through the railroad-highway grade crossing only if it is safe to completely pass through the entire railroad-highway grade crossing without stopping.

B. A person shall not:

(1) drive a vehicle through, around or under a crossing gate or barrier at a railroad-highway grade crossing while the gate or barrier is closed or being opened or closed;

(2) drive onto the railroad-highway grade crossing and stop; or

(3) enter a crossing if the vehicle being driven has insufficient undercarriage clearance to pass over the crossing.

C. The penalty assessment for violation of this section is included in Section 66-8-116 NMSA 1978."

Section 9. Section 66-7-343 NMSA 1978 (being Laws 1978, Chapter 35, Section 447) is repealed and a new Section 66-7-343 NMSA 1978 is enacted to read:

"66-7-343. RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS--CERTAIN VEHICLES REQUIRED TO ALWAYS STOP--EXCEPTIONS.--

A. Except as set forth in Subsection D of this section, a driver of a vehicle carrying passengers for hire, a school bus carrying school children or a vehicle carrying hazardous materials, radioactive or explosive substances or flammable liquids as cargo or as part of its cargo, before entering a railroad-highway grade crossing, is required to stop no more than fifty feet and no less than fifteen feet from the nearest rail of the railroad.

B. While stopped, the driver shall:

(1) look and listen in both directions along the track for an approaching train and for signals indicating that a train is approaching;

(2) determine it is safe to proceed completely through the railroad-highway grade crossing before entering it; and

(3) set the vehicle in a gear sufficiently low that gears will not need to be shifted before exiting the railroad-highway grade crossing.

C. A driver shall not shift gears while in a railroad-highway grade crossing.

D. A driver of a vehicle carrying passengers for hire, a school bus carrying school children or a vehicle carrying hazardous materials, radioactive or explosive substances or flammable liquids as cargo or as part of its cargo is not required to stop at:

(1) a railroad-highway grade crossing where a police officer directs traffic to proceed;

(2) a railroad-highway grade crossing where a stop-and-go traffic light controls movement of traffic;

(3) a railroad-highway grade crossing used exclusively for industrial switching purposes, within a business district as defined in Section 66-1-4.2 NMSA 1978;

(4) a railroad-highway grade crossing where use of the railroad has been abandoned and there is a sign indicating that the railroad has been abandoned; or

(5) an industrial or spur line railroad-highway grade crossing marked with a sign reading "exempt crossing" that has been designated as exempt by appropriate state or local authorities.

E. Penalties for violation of this section are included in Section 66-8-116 NMSA 1978."

Section 10. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for:

(1) a person twenty-one years of age or more who has an alcohol concentration in his blood or breath of eight one hundredths or more to drive a vehicle within this state; and

(2) a person who has an alcohol concentration in his blood or breath of four one hundredths or more to drive a commercial motor vehicle.

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 a 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. A person under first conviction pursuant to 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 pursuant to 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 bureau 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 pursuant to 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 pursuant to 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 pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to 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, an 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 pursuant to 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 pursuant to 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 requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

I. Upon a first conviction for aggravated driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection D of this section, as a condition of probation, an offender shall be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

J. Upon a first conviction for driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection A, B or C of this section, as a condition of probation, an offender may be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by

the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

K. Upon any subsequent conviction pursuant to this section, as a condition of probation, a subsequent offender shall be required to have an ignition interlock device installed and operating for a period of at least one year on all motor vehicles driven by the subsequent offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the subsequent offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If a subsequent offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the subsequent offender may be in violation of the terms and conditions of his probation.

L. 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.

M. A conviction pursuant to 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, and that prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

N. In addition to any other fine or fee that 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.

O. 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 11. Section 66-8-102.1 NMSA 1978 (being Laws 1982, Chapter 102, Section 2, as amended) is amended to read:

"66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the complaint or information alleges a violation of Section

66-8-102 NMSA 1978, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 66-8-102 NMSA 1978, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to the Implied Consent Act disclose that the blood or breath of the person charged contains an alcohol concentration of:

A. eight one hundredths or more; or

B. four one hundredths or more if the person charged is driving a commercial motor vehicle."

Section 12. Section 66-8-110 NMSA 1978 (being Laws 1978, Chapter 35, Section 518, as amended) is amended to read:

"66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL ACTIONS--
LEVELS OF INTOXICATION--MANDATORY CHARGING.--

A. The results of a test performed pursuant to the Implied Consent Act may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of less than four one hundredths, it shall be presumed that the person was not under the influence of intoxicating liquor;

(2) an alcohol concentration of at least four one hundredths but less than eight one hundredths:

(a) no presumption shall be made that the person either was or was not under the influence of intoxicating liquor, unless the person is driving a commercial motor vehicle; and

(b) the amount of alcohol in the person's blood may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor; or

(3) an alcohol concentration of four one hundredths or more and the person is driving a commercial vehicle, it shall be presumed that the person is under the influence of intoxicating liquor.

C. The arresting officer shall charge the person tested with a violation of Section 66-8-102 NMSA 1978 when the blood or breath of the person contains an alcohol concentration of:

(1) eight one hundredths or more; or

(2) four one hundredths or more if the person is driving a commercial motor vehicle.

D. When a person is less than twenty-one years of age and the blood or breath of the person contains an alcohol concentration of two one hundredths or more, the person's driving privileges shall be revoked pursuant to the provisions of the Implied Consent Act.

E. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor, the trial judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter."

Section 13. Section 66-8-111 NMSA 1978 (being Laws 1978, Chapter 35, Section 519, as amended) is amended to read:

"66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 66-8-107 NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 66-8-107 NMSA 1978 upon his finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a felony prosecution.

B. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs and that, upon his request, the person refused to submit to a chemical test after being advised that failure to submit could

result in revocation of his privilege to drive, shall revoke the person's New Mexico driver's license or any nonresident operating privilege for a period of one year or until all conditions for license reinstatement are met, whichever is later.

C. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor and that the person submitted to chemical testing pursuant to Section 66-8-107 NMSA 1978 and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age, shall revoke the person's license or permit to drive or his nonresident operating privilege for a period of:

(1) ninety days or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) six months or until all conditions for license reinstatement are met, whichever is later, if the person is less than twenty-one years of age and has not previously had his license revoked pursuant to the provisions of this section, notwithstanding any provision of the Children's Code; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the person has previously had his license revoked pursuant to the provisions of this section, notwithstanding the provisions of Paragraph (1) or (2) of this subsection or any provision of the Children's Code.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. If the person subject to the revocation provisions of this section is a resident or will become a resident within one year and is without a license to operate a motor vehicle in this state, the department shall deny the issuance of a license to him for the appropriate period of time as provided in Subsections B and C of this section.

F. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this section, shall be sworn to by the officer or shall contain a declaration substantially to the effect: "I hereby declare under penalty of perjury that the information given in this statement is true and correct to the best of my knowledge." A law enforcement officer who signs a statement, knowing that the statement is untrue in any material issue or matter, is guilty of perjury as provided in Section 66-5-38 NMSA 1978."

Section 14. Section 66-8-111.1 NMSA 1978 (being Laws 1984, Chapter 72, Section 7, as amended) is amended to read:

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

Section 15. Section 66-8-112 NMSA 1978 (being Laws 1978, Chapter 35, Section 520, as amended) is amended to read:

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

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

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

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

B. Within ten days after receipt of notice of revocation pursuant to Subsection A of this section, a person whose license or privilege to drive is revoked or denied or the person's agent may request a hearing. The hearing request shall be made

in writing and shall be accompanied by a payment of twenty-five dollars (\$25.00) or a sworn statement of indigency on a form provided by the department. A standard for indigency shall be established pursuant to regulations adopted by the department. Failure to request a hearing within ten days shall result in forfeiture of the person's right to a hearing. Any person less than eighteen years of age who fails to request a hearing within ten days shall have notice of revocation sent to his parent, guardian or custodian by the department. A date for the hearing shall be set by the department, if practical, within thirty days after receipt of notice of revocation. The hearing shall be held in the county in which the offense for which the person was arrested took place.

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

D. At the hearing, the department or its agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

E. The hearing shall be limited to the issues:

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

(2) whether the person was arrested;

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

(4) whether:

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

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

(5) whether:

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

(b) the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one

years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more in the person's blood or breath if the person is less than twenty-one years of age.

F. The department shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the department finds that:

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

(2) the person was arrested;

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

(4) either:

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

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

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

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

I. Any person less than eighteen years of age shall have results of his hearing forwarded by the department to his parent, guardian or custodian."

Section 16. Section 66-8-116 NMSA 1978 (being Laws 1978, Chapter 35, Section 524, as amended) is amended to read:

"66-8-116. PENALTY ASSESSMENT MISDEMEANORS--DEFINITION--
SCHEDULE OF ASSESSMENTS.--

A. As used in the Motor Vehicle Code, "penalty assessment misdemeanor" means violation of any of the following listed sections of the NMSA 1978 for which, except as provided in Subsection D of this section, the listed penalty assessment is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
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ASSESSMENT

Permitting unlicensed minor to drive	66-5-40	\$10.00
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Failure to obey sign	66-7-104	10.00
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Failure to obey signal	66-7-105	10.00
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Speeding	66-7-301	
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(1) up to and including

ten miles an hour

over the speed limit	15.00
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(2) from eleven up to

and including fifteen

miles an hour

over the speed limit	30.00
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(3) from sixteen up to

and including twenty

miles an hour over the

speed limit	65.00
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(4) from twenty-one up to

and including twenty-five
miles an hour
over the speed limit 100.00

(5) from twenty-six up to
and including thirty
miles an hour over the
speed limit 125.00

(6) from thirty-one up to
and including thirty-five
miles an hour over the
speed limit 150.00

(7) more than thirty-five
miles an hour over the
speed limit 200.00

Unfastened safety belt 66-7-372 25.00

Child not in restraint device
or seat belt 66-7-369 25.00

Minimum speed 66-7-305 10.00

Speeding 66-7-306 15.00

Improper starting 66-7-324 10.00

Improper backing 66-7-354 10.00

Improper lane 66-7-308 10.00

Improper lane 66-7-313 10.00

Improper lane	66-7-316	10.00
Improper lane	66-7-317	10.00
Improper lane	66-7-319	10.00
Improper passing	66-7-309 through 66-7-312	10.00
Improper passing	66-7-315	10.00
Controlled access		
violation	66-7-320	10.00
Controlled access		
violation	66-7-321	10.00
Improper turning	66-7-322	10.00
Improper turning	66-7-323	10.00
Improper turning	66-7-325	10.00
Following too closely	66-7-318	10.00
Failure to yield	66-7-328 through 66-7-332	10.00
Failure to yield	66-7-332.1	25.00
Pedestrian violation	66-7-333	10.00
Pedestrian violation	66-7-340	10.00
Failure to stop	66-7-342 and 66-7-344 through 66-7-346	10.00
Railroad-highway grade		
crossing violation	66-7-341 and	

	66-7-343	10.00
Passing school bus	66-7-347	100.00
Failure to signal	66-7-325 through	
	66-7-327	10.00
Failure to secure load	66-7-407	100.00
Operation without oversize-		
overweight permit	66-7-413	50.00
Improper equipment	66-3-801	10.00
Improper equipment	66-3-901	20.00
Improper emergency		
signal	66-3-853 through	
	66-3-857	10.00
Operation interference	66-7-357	5.00
Littering	66-7-364	300.00
Improper parking	66-7-349 through	
	66-7-352 and 66-7-353	5.00
Improper parking	66-7-352.5	50.00
Improper parking	66-3-852	5.00
Failure to dim lights	66-3-831	10.00
Riding in or towing		
occupied house trailer	66-7-366	5.00
Improper opening of doors	66-7-367	5.00
No slow-moving vehicle		

emblem or flashing

amber light 66-3-887 5.00

Open container - first

violation 66-8-138 25.00.

B. The term "penalty assessment misdemeanor" does not include a violation that has caused or contributed to the cause of an accident resulting in injury or death to a person.

C. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, a fine imposed upon later conviction shall not exceed the penalty assessment established for the particular penalty assessment misdemeanor and probation imposed upon a suspended or deferred sentence shall not exceed ninety days.

D. The penalty assessment for speeding in violation of Paragraph (4) of Subsection A of Section 66-7-301 NMSA 1978 is twice the penalty assessment established in Subsection A of this section for the equivalent miles per hour over the speed limit."

Section 17. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 250, AS AMENDED

WITH EMERGENCY CLAUSE,

SIGNED MARCH 19, 2003

CHAPTER 52

CHAPTER 52, LAWS 2003

AN ACT

RELATING TO THE COURTS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978 REGARDING VENUE IN THE COURTS; DECLARING AN EMERGENCY.

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

Section 1. Section 38-3-3 NMSA 1978 (being Laws 1929, Chapter 60, Section 1, as amended) is amended to read:

"38-3-3. CHANGE OF VENUE IN CIVIL AND CRIMINAL CASES.--The venue in all civil and criminal cases shall be changed, upon motion, to another county free from exception:

A. whenever the judge is interested in the result of the case or is related to or has been counsel for any of the parties; or

B. when the party moving for a change files in the case an affidavit of himself, his agent or attorney, that he believes he cannot obtain a fair trial in the county in which the case is pending because:

(1) the adverse party has undue influence over the minds of the inhabitants of the county;

(2) the inhabitants of the county are prejudiced against the party;

(3) of public excitement or local prejudice in the county in regard to the case or the questions involved in the case, an impartial jury cannot be obtained in the county to try the case; or

(4) of any other cause stated in the affidavit."

Section 2. REPEAL.--Section 38-3-8 NMSA 1978 (being Laws 1889, Chapter 77, Section 4, as amended) is repealed.

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

HOUSE BILL 181, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED MARCH 19, 2003

CHAPTER 53

CHAPTER 53, LAWS 2003

AN ACT

RELATING TO DEVELOPMENT TRAINING; PROVIDING FOR DEVELOPMENT TRAINING PROGRAMS; DECLARING AN EMERGENCY.

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

Section 1. DISTRIBUTION OF APPROPRIATION.--

A. Of appropriations made in fiscal year 2004 for development training, up to two-thirds shall be expended in urban communities in the state. At least one-third of the appropriations made in fiscal year 2004 for development training shall be expended in non-urban communities.

B. Up to fifty thousand dollars (\$50,000) of money appropriated to the economic development department for expenditure in fiscal year 2004 for in-plant training may be used by the department to administer the development training program.

C. As used in this section:

(1) "non-urban community" means a municipality that is not an urban community or the unincorporated area of a county; and

(2) "urban community" means a municipality with a population of forty thousand or more according to the most recent federal decennial census.

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

HOUSE BILL 8, AS AMENDED

WITH EMERGENCY CLAUSE,

SIGNED MARCH 19, 2003

CHAPTER 54

CHAPTER 54, LAWS 2003

AN ACT

RELATING TO WATER; PROVIDING WATER BANKING AUTHORITY TO ACEQUIAS AND COMMUNITY DITCHES.

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

Section 1. WATER BANKING--ACEQUIAS AND COMMUNITY DITCHES.--An acequia or community ditch may establish a water bank for the purpose of temporarily reallocating water without change of purpose of use or point of diversion to augment the water supplies available for the places of use served by the acequia or community ditch. The acequia or community ditch water bank may make temporary transfers of place of use without formal proceedings before the state engineer, and water rights placed in the acequia or community ditch water bank shall not be subject to loss for non-use during the period the rights are placed in the water bank. An acequia or community ditch water bank established pursuant to this section is not subject to recognition or approval by the interstate stream commission or the state engineer.

Section 2. Section 72-1-2.3 NMSA 1978 (being Laws 2002, Chapter 77, Section 1) is amended to read:

"72-1-2.3. LOWER PECOS RIVER BASIN BELOW SUMNER LAKE WATER BANK--ACEQUIA AND COMMUNITY DITCH WATER BANKS--INTERSTATE STREAM COMMISSION.--

A. The interstate stream commission may recognize a water bank established by an irrigation district, a conservancy district, an artesian conservancy district, a community ditch, an acequia or a water users association in the lower Pecos river basin below Sumner lake for purposes of compliance with the Pecos River Compact.

B. The interstate stream commission shall propose and recommend to the state engineer for adoption rules for

recognition of a water bank that include:

(1) criteria, terms and conditions for deposit of a water right in the bank;

(2) terms and conditions for the accrual, pooling, exchange, assignment and conditions of the deposit of a water right;

(3) procedures for recording and annual reporting of all transactions to the interstate stream commission and the state engineer; and

(4) procedures for the water bank to temporarily transfer deposited water to new purposes and places of use and points of diversion without formal proceedings before the state engineer.

C. A lower Pecos river basin below Sumner lake water bank may contract with a person to accrue, pool, exchange, assign or lease water rights to facilitate compliance with the Pecos River Compact. A transaction and transfer of water by a water bank in the Pecos river basin shall:

(1) not impair other water rights;

(2) not deplete water in the system above that level that would have occurred in the absence of the transaction;

(3) comply with state law; and

(4) be within the same stream system or underground water source."

Section 3. Section 72-1-2.3 NMSA 1978 (being Laws 2002, Chapter 77, Section 1, as amended) is repealed effective December 31, 2005.

SENATE BILL 124

CHAPTER 55

CHAPTER 55, LAWS 2003

AN ACT

RELATING TO THE STATE TRANSPORTATION COMMISSION; AMENDING THE PROVISIONS FOR REMOVAL OF COMMISSIONERS.

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

Section 1. Section 67-3-5 NMSA 1978 (being Laws 1967, Chapter 266, Section 4, as amended) is amended to read:

"67-3-5. REMOVAL OF COMMISSIONERS.-- The state transportation commission, appointed by the governor and confirmed by the senate, shall serve at the pleasure of the

governor. Transportation commissioners, appointed and confirmed by the senate pursuant to Subsection B of Section 67-3-4 NMSA 1978, shall not be removed without prior approval of the senate."

SENATE BILL 652, AS AMENDED

CHAPTER 56

CHAPTER 56, LAWS 2003

AN ACT

RELATING TO INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND; CHANGING THE AMOUNT AUTHORIZED FOR INVESTMENT IN FILMS PRODUCED IN NEW MEXICO; PROVIDING THE STATE INVESTMENT OFFICER WITH AUTHORITY TO PURCHASE FILM PRODUCTION TAX CREDITS FROM ELIGIBLE NEW MEXICO FILM PROJECTS; DECLARING AN EMERGENCY.

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

Section 1. Section 7-27-5.26 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 6, Section 2, as amended) is amended to read:

"7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW MEXICO.--

A. No more than two and one-half percent of the market value of the severance tax permanent fund may be invested in New Mexico film private equity funds or a New Mexico film project 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 film private equity fund or any one New Mexico film project.

C. The state investment officer shall make investments pursuant to this section only upon approval of the state investment council after a review by the private equity investment advisory committee and the New Mexico film division of the economic development department. The state investment officer may make debt or equity

investments pursuant to this section only in New Mexico film projects or New Mexico film private equity funds that invest only in film projects that:

(1) are filmed wholly or substantially in New Mexico;

(2) have shown to the satisfaction of the New Mexico film division that a distribution contract is in place with a reputable distribution company;

(3) have agreed that, while filming in

New Mexico, a majority of the production crew will be

New Mexico residents;

(4) have posted a completion bond that has been approved by the New Mexico film division; provided that a completion bond shall not be required if the fund or project is guaranteed pursuant to Paragraph (5) of this subsection; and

(5) have obtained a full, unconditional and irrevocable guarantee of repayment of the invested amount in favor of the severance tax permanent fund:

(a) from an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(b) from a substantial subsidiary of an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(c) by providing a full, unconditional and irrevocable letter of credit from a United States incorporated bank with a credit rating of not less than A by a national rating agency; or

(d) from a substantial and solvent entity as determined by the state investment council in accordance with its standards and practices; or

(6) if not guaranteed pursuant to Paragraph (5) of this subsection, have obtained no less than one-third of the estimated total production costs from other sources as approved by the state investment officer.

D. The state investment officer may purchase at a discount, from an eligible New Mexico film project, up to eighty percent of an expected and estimated film production tax credit available to a film production company pursuant to the provisions of Section 7-2F-1 NMSA 1978. The New Mexico film division of the economic development department shall determine the estimated amount of a film production tax credit. The state investment council shall establish guidelines for the state investment officer's initiation of a purchase and the terms of the purchase.

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 New Mexico film private equity fund, which fixed amounts may be invested in that fund in one or more payments over time;

(2) "film project" means a single media or multimedia program, including advertising messages, fixed on film, videotape, computer disc, laser disc or other similar delivery medium from which the program can be viewed or reproduced and that is intended to be exhibited in theaters; licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means; or licensed for the home viewing market; and

(3) "New Mexico film private equity fund" means any limited partnership, limited liability company or corporation organized and operating in the United States that:

(a) has as its primary business activity the investment of funds in return for equity in film projects produced wholly or partly in New Mexico;

(b) holds out the prospects for capital appreciation from such investments; and

(c) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, and rules promulgated pursuant to that section."

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

SENATE BILL 380, AS AMENDED,

WITH EMERGENCY CLAUSE,

SIGNED MARCH 20, 2003

CHAPTER 57

CHAPTER 57, LAWS 2003

AN ACT

RELATING TO PROPERTY TAXES; IMPLEMENTING THE INCREASED TAX EXEMPTION FOR VETERANS REQUIRED BY ARTICLE 8, SECTION 5 OF THE CONSTITUTION OF NEW MEXICO; IMPLEMENTING THE EXPANSION OF THE DISABLED VETERAN EXEMPTION REQUIRED BY ARTICLE 8, SECTION 15 OF THE CONSTITUTION OF NEW MEXICO; DECLARING AN EMERGENCY.

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

Section 1. Section 7-37-5 NMSA 1978 (being Laws 1973, Chapter 258, Section 38, as amended) is amended to read:

"7-37-5. VETERAN EXEMPTION.--

A. Up to four thousand dollars (\$4,000) of the taxable value of property, including the community or joint property of husband and wife, subject to the tax is exempt from the imposition of the tax if the property is owned by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident. The exemption shall be deducted from taxable value of to determine net taxable value of property. The exemption allowed shall be in the following amounts for the specified tax years:

(1) for tax years prior to 2003, the exemption shall be two thousand dollars (\$2,000);

(2) for tax year 2003, the exemption shall be two thousand five hundred dollars (\$2,500);

(3) for tax year 2004, the exemption shall be three thousand dollars (\$3,000);

(4) for tax year 2005, the exemption shall be three thousand five hundred dollars (\$3,500); and

(5) for tax year 2006 and each subsequent tax year, the exemption shall be four thousand dollars (\$4,000).

B. The veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the department.

C. As used in this section, "veteran" means an individual who:

(1) has been honorably discharged from membership in the armed forces of the United States;

(2) served in the armed forces of the

United States on active duty continuously for ninety days, any part of which occurred during a period specified in Paragraph (3) of this subsection; and

(3) served in the armed forces of the

United States during one or more of the following periods of armed conflict under orders of the president:

(a) any armed conflict prior to World War I;

(b) World War I, which, for the purposes of this section, is defined as the period April 6, 1917 through April 1, 1920;

(c) World War II, which, for the purposes of this section, is defined as the period December 7, 1941 through December 31, 1946;

(d) the Korean conflict, which, for the purposes of this section, is defined as the period June 27, 1950 through January 31, 1955;

(e) the Vietnam conflict, which, for the purposes of this section, is defined as the period August 5, 1964 through May 7, 1975;

(f) the Grenada conflict, which, for the purposes of this section, is defined as the period October 13 through December 31, 1983; or

(g) the Persian gulf conflict, which, for the purposes of this section, is defined as the period August 2, 1990 through the date upon which the president of the United States or a competent military authority declares the conflict to be ended, but in no case earlier than July 1, 1992.

D. For the purposes of Subsection C of this section, a person who would otherwise be entitled to status as a veteran except for failure to have served in the armed forces continuously for ninety days is considered to have met that qualification if he served during the applicable period for less than ninety days and the reason for not having served for ninety days was a discharge brought about by service-connected disablement.

E. For the purposes of Paragraph (1) of Subsection C of this section, a person has been "honorably discharged" unless he received either a dishonorable discharge or a discharge for misconduct.

F. For the purposes of this section, a person whose civilian service has been recognized as service in the armed forces of the United States under federal law and who has been issued a discharge certificate by a branch of the armed forces of the

United States shall be considered to have served in the armed forces of the United States."

Section 2. Section 7-37-5.1 NMSA 1978 (being Laws 2000, Chapter 92, Section 1 and Laws 2000, Chapter 94, Section 1) is amended to read:

"7-37-5.1. DISABLED VETERAN EXEMPTION.--

A. As used in this section:

(1) "disabled veteran" means an individual who:

(a) has been honorably discharged from membership in the armed forces of the United States or has received a discharge certificate from a branch of the armed forces of the United States for civilian service recognized pursuant to federal law as service in the armed forces of the United States; and

(b) has been determined pursuant to federal law to have a one hundred percent permanent and total service-connected disability; and

(2) "honorably discharged" means discharged from the armed forces pursuant to a discharge other than a dishonorable or bad conduct discharge.

B. The property of a disabled veteran, including joint or community property of the veteran and the veteran's spouse, is exempt from property taxation if it is occupied by the disabled veteran as his principal place of residence. Property held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a disabled veteran or the veteran's surviving spouse is also exempt from property taxation if the property otherwise meets the requirements for exemption in this subsection or Subsection C of this section.

C. The property of the surviving spouse of a disabled veteran is exempt from property taxation if:

(1) the surviving spouse and the disabled veteran were married at the time of the disabled veteran's death;

(2) the property was exempt prior to the disabled veteran's death pursuant to Subsection B of this section; and

(3) the surviving spouse continues to occupy the property continuously after the disabled veteran's death as the spouse's principal place of residence.

D. The exemption provided by this section may be referred to as the "disabled veteran exemption".

E. The disabled veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and the rules of the department.

F. The New Mexico veterans' service commission shall assist the department and the county assessors in determining which veterans qualify for the disabled veteran exemption."

Section 3. APPLICABILITY.--The provisions of Section 2 of this act are applicable to property tax year 2003 and subsequent property tax years.

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 188, WITH EMERGENCY

CLAUSE, SIGNED MARCH 20, 2003

CHAPTER 58

CHAPTER 58, LAWS 2003

AN ACT

RELATING TO TAXATION; REVISING THE EXEMPTIONS FROM THE PREMIUM TAX; DECLARING AN EMERGENCY.

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

Section 1. Section 59A-6-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 102, as amended) is amended to read:

"59A-6-2. PREMIUM TAX.--

A. The premium tax provided for in this section shall apply as to the following taxpayers:

(1) each insurer authorized to transact insurance in New Mexico;

(2) each insurer formerly authorized to transact insurance in New Mexico and receiving premiums on policies remaining in force in New Mexico, except that this provision shall not apply as to an insurer that withdrew from New Mexico prior to March 26, 1955;

(3) each plan operating under provisions of Chapter 59A, Articles 46 through 49 NMSA 1978;

(4) each property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978, as to any consideration received as security or surety for a bail bond in connection with a judicial proceeding, which consideration shall be considered "gross premiums" for the purposes of this section; and

(5) each unauthorized insurer that has assumed a contract or policy of insurance directly or indirectly from an authorized or formerly authorized insurer and is receiving premiums on such policies remaining in force in New Mexico, except that this provision shall not apply if a ceding insurer continues to pay the tax provided in this section as to such policy or contract.

B. Each such taxpayer shall pay in accordance with this subsection three percent of the gross premiums and membership and policy fees received by it on insurance or contracts covering risks within this state during the preceding calendar year, less all return premiums, including dividends paid or credited to policyholders or contract holders and premiums received for reinsurance on New Mexico risks. For each calendar quarter, an estimated payment shall be made on April 15, July 15, October 15 and the following January 15. The estimated payments shall be equal to at least one-fourth of either the payment made during the previous calendar year or eighty percent of the actual payment due for the current calendar year, whichever is greater. The final adjustment for payments due for the prior year shall be made with the return which shall be filed on April 15 of each year, at which time all taxes for that year are due. Dividends paid or credited to policyholders or contract holders and refunds, savings, savings coupons and similar returns or credits applied or credited to payment of premiums for existing, new or additional insurance shall, in the amount so used, constitute premiums subject to tax under this section for the year in which so applied or credited, except that:

(1) as to every insurer that throughout such preceding calendar year had at least forty percent of its admitted assets invested in New Mexico investments, as the same are defined in Subsection C of this section, the rate of such tax shall be nine-tenths percent in lieu of three percent; and

(2) effective January 1, 1992, the rate shall be one and four-tenths percent; effective July 1, 1992, the rate shall be one and nine-tenths percent; effective January 1, 1993, the rate shall be two and four-tenths percent; and effective July 1, 1993 and thereafter, the rate shall be three percent.

C. New Mexico investments for the purpose of Subsection B of this section are defined as follows:

- (1) real estate located within New Mexico;
- (2) bonds or obligations of New Mexico or of any county or other subdivision thereof;
- (3) bonds, debentures or secured obligations of any corporation that has fifty percent of its assets located within New Mexico;
- (4) first mortgages secured by real estate located within New Mexico;
- (5) deposits in state banks, national banks and trust companies having their principal place of business within New Mexico;
- (6) policy loans to residents of New Mexico; and
- (7) preferred and common stock of corporations having at least fifty percent of their assets located within New Mexico.

D. Nothing contained in Subsection C of this section shall be construed to affect any provision of Chapter 59A, Article 9 NMSA 1978.

E. Exempted from the tax imposed by Subsection B of this section are:

- (1) premiums attributable to insurance or contracts purchased by the state or a political subdivision for the state's or political subdivision's active or retired employees; and
- (2) payments received by a health maintenance organization from the federal secretary of health and human services pursuant to a contract issued under the provisions of 42 U.S.C. Section 1395 mm(g)."

Section 2. TEMPORARY PROVISION--TRANSITION.--A taxpayer that makes an estimated payment for the first quarter of 2003 on April 15, 2003 pursuant to Section 59A-6-2 NMSA 1978 as it is amended in this act and, in determining that payment, is required to include premiums that would have been exempt pursuant to the law in effect prior to January 1, 2003 shall not be subject to interest and penalty charges for late payment or underpayment of that estimated payment or the underlying tax liability.

Section 3. APPLICABILITY.--The provisions of this act apply to premiums received in the 2003 and subsequent calendar years.

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 331, WITH EMERGENCY

CLAUSE, SIGNED MARCH 20, 2003

CHAPTER 59

CHAPTER 59, LAWS 2003

AN ACT

RELATING TO BEHAVIORAL HEALTH; CREATING AN INTERAGENCY COORDINATING COMMITTEE TO ADDRESS BEHAVIORAL HEALTH NEEDS IDENTIFIED IN THE DEPARTMENT OF HEALTH GAP ANALYSIS.

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

Section 1. INTERAGENCY BEHAVIORAL HEALTH COORDINATING COMMITTEE.--There is created an "interagency behavioral health coordinating committee", consisting of the secretary of health, who shall chair the committee, the secretary of finance and administration, the secretary of human services, the secretary of children, youth and families, the secretary of corrections, the secretary of labor, the superintendent of insurance, the superintendent of public instruction and the governor's chief of staff or their designees. The committee shall meet monthly to develop a master plan for statewide delivery of behavioral services and to coordinate progress on addressing the behavioral health priority needs of the state as identified in the department of health analysis of the gap between needs and services available. The committee shall review all contracts relating to behavioral health, including the SALUD managed care contracts, giving special attention to the rates paid for outpatient services in rural and frontier areas of the state. The committee shall present an annual

progress report and recommendations for legislative action to the legislative finance committee and the legislative health and human services committee at their respective October meetings.

SENATE BILL 295, AS AMENDED

CHAPTER 60

CHAPTER 60, LAWS 2003

AN ACT

RELATING TO HEALTH CARE; ENACTING THE NAPRAPATHIC PRACTICE ACT; PROVIDING FOR LICENSURE; ENACTING PENALTIES; ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the "Naprathic Practice Act".

Section 2. DEFINITIONS.--As used in the Naprathic Practice Act:

- A. "applicant" means a person who is applying to be licensed for the first time as a naprathic in New Mexico;
- B. "board" means the naprathic practice board;
- C. "department" means the regulation and licensing department;
- D. "fund" means the naprathic fund;
- E. "license" means an authorization by the superintendent that permits a person to practice naprathic in the state;
- F. "licensee" means a person licensed by the superintendent as a naprathic;
- G. "naprathic" means a person who practices naprathic; and
- H. "superintendent" means the superintendent of regulation and licensing.

Section 3. LICENSURE REQUIRED--EXCEPTIONS--REGISTRATION.--

A. A person shall not practice naprapathy in the state without a valid license issued by the superintendent based on recommendations from the board.

B. A person who is a naprapath practitioner employed by a federal government facility or agency in New Mexico is not required to be licensed pursuant to the Naprapathic Practice Act.

C. A person who is enrolled in a program approved by the superintendent to provide training for naprapaths or a person receiving continuing educational training to practice naprapathy is not required to be licensed or registered with the board.

D. A person teaching, advising or supervising students of naprapathy or teaching continuing education for naprapaths shall not practice naprapathy in New Mexico unless he is licensed by the board.

E. A person in the state to teach, advise or supervise naprapaths or students for less than one month may only practice naprapathy if he is registered with the board as a teacher, advisor or supervisor and if the practice occurs in the course of his duties as a teacher, advisor or supervisor.

F. Nothing in the Naprapathic Practice Act shall be construed to prevent a person qualified as a member of a recognized profession, the practice of which requires a license or is regulated pursuant to the laws of New Mexico, from rendering services within the scope of the person's license or a state rule adopted to regulate the profession; provided that the person does not represent himself to be a naprapath.

Section 4. PRACTICE OF NAPRAPATHY--DESCRIPTION.--

A. Naprapathic practice includes the diagnosis and treatment of persons with connective tissue disorders through the use of special techniques, review of case history, examination and palpation or treatment of a person by the use of connective tissue manipulation, exercise, postural counseling, nutritional counseling and the application or use of heat, cold, light, water, radiant energy, electricity, sound and air and assistive devices for the purpose of preventing, correcting or alleviating a physical disability.

B. A naprapath treats contractures, muscle spasms, inflammations, scar tissue formation, adhesions, lesions, laxity, hypotonicity, rigidity, structural imbalances, bruises, contusions, muscular atrophy and partial separation of connective tissue fibers.

C. Naprapathic practice may require the:

(1) performance of specialized tests and measurements;

(2) administration of specialized treatment procedures; and

(3) establishment and modification of naprapathic treatment programs.

D. A licensee may advise, supervise or teach another in the performance of naprapathy.

E. Naprapathic practice does not include surgery, acupuncture, Chinese herbal medicine, pharmacology or invasive diagnostic testing. A naprapath who is not licensed pursuant to the Acupuncture and Oriental Medicine Practice Act shall not hold himself out as qualified to perform acupuncture or provide oriental medicine services. A naprapath who is not licensed as a physical therapist pursuant to the Physical Therapy Act shall not hold himself out as qualified to provide physical therapy or physiotherapy services. A naprapath who is not licensed pursuant to the Chiropractic Physician Practice Act may not hold himself out as qualified to perform chiropractic practices. A naprapath who is not licensed as an occupational therapist pursuant to the Occupational Therapy Act shall not hold himself out as qualified to provide occupational therapy. Nothing in this section shall limit a naprapath from employing appropriate naprapathic techniques that a naprapath is educated and licensed to perform except as set forth in this subsection.

F. A naprapath shall refer to a licensed physician any patient whose medical condition should, at the time of evaluation or treatment, be determined to be beyond the scope of practice of the naprapath.

Section 5. EDUCATION--PROFESSIONAL QUALIFICATIONS.--

A. A person may be qualified to receive a license as a naprapath if that person:

(1) is at least twenty-one years of age;

(2) has graduated from a two-year college-level program or an equivalent program approved by the superintendent after consultation with the board;

(3) has completed, in not less than three years, a four-year academic curriculum in naprapathy, that is approved by and conforms to the strict protocol of and guidelines set by the American naprapathic association, and the person has successfully completed one hundred thirty-two hours of academic credit, including sixty-six credit hours in basic science courses with emphasis on the study of connective tissue, and sixty-six credit hours in clinical science courses teaching naprapathic science, theory and application;

(4) has passed the national board of naprapathic examiners examination or can show proof that the person holds a valid license as a naprapath in another jurisdiction; and

(5) has met all other requirements of the Naprapathic Practice Act.

B. The superintendent or the board may require a personal interview with an applicant to evaluate that person's qualifications for a license.

Section 6. APPLICATION.--

A. An applicant for a license shall:

(1) complete and submit an application on a form furnished by the superintendent; and

(2) provide all of the information requested by the superintendent.

B. An applicant shall submit a nonrefundable application fee with his application.

Section 7. DESIGNATION AS NAPRAPATH.--

A. A person to whom a license as a naprapath has been issued by the superintendent is designated a "naprapath" and may use that title in connection with the practice of the profession of naprapathy.

B. A person licensed as a naprapath, who is a graduate of a program in naprapathy at a school approved by the superintendent, may use the title "doctor of naprapathy" or the letters "D.N." following the licensee's name, to indicate the licensee's professional status.

C. The superintendent shall adopt rules following hearings held by the board regarding the manner in which titles and other indicia of the profession may be used.

Section 8. LICENSE DISPLAY.--A licensee shall display his license and diplomas in his place of business in a location clearly visible to the naprapath's patients.

Section 9. BOARD--CREATION.--

A. The "naprapathic practice board" is created and is administratively attached to the department.

B. The board shall have five members who are residents of New Mexico, three of whom shall be licensed naprapaths and two of whom shall be public members who have not been licensed and have no financial interest, direct or indirect, in the profession of naprapathy.

C. Members shall be appointed by the governor for four-year terms. No member shall serve more than two terms, except that a person who is appointed to complete an unexpired term of a member of the board may also serve for two full terms.

D. Each member of the board shall serve until a replacement is appointed.

E. The board shall elect annually a chairman and other officers as determined by the board to be needed.

F. The board shall meet as often as necessary to conduct business, but shall meet not less than twice per calendar year. Meetings shall comply with the Open Meetings Act. Three members shall constitute a quorum.

G. Members of the board shall be reimbursed as are nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

Section 10. DUTIES OF THE BOARD.--

A. The board shall advise the superintendent regarding licensure of naprapaths, approval of naprapathy curricula, approval of degree programs in naprapathy and any other matters that are necessary to ensure the training and licensure of competent naprapaths.

B. The board shall hold hearings and develop rules for the superintendent to review and adopt:

(1) regulating licensure of naprapaths, the practice of naprapathy and establishing minimum qualifications and hours of clinical experience required for licensure as a naprapath;

(2) prescribing the manner in which records of examinations and treatments shall be kept and maintained;

(3) regarding professional responsibility and conduct;

(4) identifying disciplinary actions and circumstances that require disciplinary action;

(5) developing a means to provide information to all naprapaths licensed in the state;

(6) providing for the inspection of the business premises of a licensee when the board determines that an inspection is necessary;

(7) providing for the investigation of complaints against licensees or persons holding themselves out as practicing naprapathy in the state;

(8) publishing information for the public about licensees and the practice of naprapathy in the state;

(9) providing for an orderly process for reinstatement of a license;

(10) establishing criteria for acceptance of naprapathy credentials or licensure from another jurisdiction;

(11) providing criteria for advertising or promotional materials; and

(12) regarding any matter necessary to implement the Naprapathic Practice Act.

Section 11. LICENSE RENEWAL.--The superintendent shall review licenses for renewal annually, and all licenses to be renewed shall be renewed on July 1. Applicants for license renewal shall submit:

A. a renewal application on a form developed by the superintendent;

B. a license renewal fee; and

C. proof of completion of continuing education requirements required by rule.

Section 12. LICENSE FEES.--The superintendent shall establish license and administrative fees, but no individual fee shall exceed one thousand dollars (\$1,000).

Section 13. NAPRAPATHY FUND CREATED--USE--APPROPRIATION.--

A. The "naprapathy fund" is created in the state treasury.

B. All fees collected pursuant to the provisions of the Naprapathic Practice Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the fund.

C. Money in the fund is appropriated to the department to carry out the provisions of the Naprapathic Practice Act. Any unexpended or unencumbered balance

remaining in the fund at the end of a fiscal year shall not revert to the general fund. Expenditures shall be made from the fund on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the superintendent.

Section 14. ADMINISTRATIVE HEARINGS.--Administrative hearings shall be conducted pursuant to the Uniform Licensing Act.

Section 15. OFFENSES--CRIMINAL PENALTIES.--A person who practices naprapathy without a license is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

Section 16. VIOLATION--CIVIL PENALTIES.--The superintendent may fine any person who intentionally violates the provisions of the Naprapathic Practice Act up to one thousand dollars (\$1,000) or may suspend or revoke the licensee's authority to practice naprapathy in New Mexico.

Section 17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The naprapathic practice board is terminated on July 1, 2011 pursuant to the Sunset Act. The board shall continue to operate according to the Naprapathic Practice Act until July 1, 2012. Effective July 1, 2012, the Naprapathic Practice Act is repealed.

SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 255

CHAPTER 61

CHAPTER 61, LAWS 2003

AN ACT

RELATING TO PUBLIC FINANCE; INCREASING THE AMOUNT OF GRANTS THAT MAY BE MADE FROM THE WATER AND WASTEWATER PROJECT GRANT FUND; AMENDING A SECTION OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 6-21-6.3 NMSA 1978 (being Laws 1999, Chapter 186, Section 2, as amended) is amended to read:

"6-21-6.3. WATER AND WASTEWATER PROJECT GRANT FUND--
CREATION--ADMINISTRATION--PURPOSES.--

A. There is created in the authority the "water and wastewater project grant fund", which shall be administered by the authority. The authority shall adopt, in accordance with the New Mexico Finance Authority Act, rules necessary to administer the fund.

B. The following shall be deposited directly into the water and wastewater project grant fund:

(1) the net proceeds from the sale of bonds issued pursuant to the provisions of Section 6-21-6.1 NMSA 1978 for the purposes of the water and wastewater project grant fund and payable from the public project revolving fund;

(2) money appropriated by the legislature to implement the provisions of this section; and

(3) any other public or private money dedicated to the fund.

C. Money in the water and wastewater project grant fund is appropriated to the authority to make grants to qualified entities for water or wastewater public projects pursuant to specific authorization by law for each project and to pay administrative costs of the water and wastewater project grant program.

D. The authority shall adopt rules governing the terms and conditions of grants made from the water and wastewater project grant fund. Except in the circumstances set forth in Subsection F of this section, grants may be made from the fund only with participation from the qualified entity in the form of a local match, which shall be determined by a sliding scale based on the qualified entity's financial capacity to pay a portion of the project from local resources. Grants from the water and wastewater project grant fund may be made only as all or part of financing for a complete project after the authority has determined that the financing for the complete project is cost effective.

E. The authority may make grants from the water and wastewater project grant fund to qualified entities for emergency public projects without specific authorization by law. Each emergency public project shall be designated as such by the authority prior to making the grant. The aggregate amount of grants for emergency public projects in fiscal years 2003, 2004 and 2005 shall not exceed six million dollars (\$6,000,000) for each fiscal year. The aggregate amount of grants for emergency public projects in fiscal year 2006 and subsequent fiscal years shall not exceed three million dollars (\$3,000,000) for each fiscal year.

F. To encourage consolidation of water or wastewater systems and to discourage proliferation of multiple water or wastewater systems, the authority may determine the local match requirement based on the financial capacity of:

(1) the residents of the geographic area benefiting from the improvements to be financed with the proceeds of the grant received on their behalf by the qualified entity; or

(2) the qualified entity benefiting from the improvements to be financed with the proceeds of the grant when the benefiting qualified entity agrees to consolidate with the qualified entity receiving the grant."

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

SENATE BILL 273, AS AMENDED,

WITH EMERGENCY CLAUSE

SIGNED MARCH 20, 2003

CHAPTER 62

CHAPTER 62, LAWS 2003

AN ACT

RELATING TO TAXATION; PROVIDING ADDITIONAL GROSS RECEIPTS AND COMPENSATING TAX EXEMPTIONS RELATED TO SPACE VEHICLES; PROVIDING A COMPENSATING TAX DEDUCTION FOR THE USE OF CERTAIN MATERIALS OR DEVICES USED IN RESEARCH OR TESTING; AMENDING AND ENACTING SECTIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT.

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

Section 1. A new section of the Gross Receipts and Compensating Tax Act, Section 7-9-26.1 NMSA 1978, is enacted to read:

"7-9-26.1. EXEMPTION--GROSS RECEIPTS TAX AND COMPENSATING TAX-- FUEL FOR SPACE VEHICLES.--

A. Exempted from the gross receipts tax are the receipts from selling fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers.

B. Exempted from the compensating tax is the use of fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers."

Section 2. Section 7-9-30 NMSA 1978 (being Laws 1969, Chapter 144, Section 23, as amended) is amended to read:

"7-9-30. EXEMPTION--COMPENSATING TAX--RAILROAD EQUIPMENT, AIRCRAFT AND SPACE VEHICLES.--

A. Exempted from the compensating tax is the use of railroad locomotives, trailers, containers, tenders or cars procured or bought for use in railroad transportation.

B. Exempted from the compensating tax is the use of commercial aircraft bought or leased primarily for use in the transportation of passengers or property for hire in

interstate commerce.

C. Exempted from the compensating tax is the use of space vehicles for transportation of persons or property in, to or from space."

Section 3. Section 7-9-54.2 NMSA 1978 (being Laws 1995, Chapter 183, Section 2, as amended) is amended to read:

"7-9-54.2. GROSS RECEIPTS--DEDUCTION--SPACEPORT OPERATION--SPACE OPERATIONS--LAUNCHING, OPERATING AND RECOVERING SPACE VEHICLES OR PAYLOADS--PAYLOAD SERVICES.--

A. Receipts from launching, operating or recovering space vehicles or payloads in New Mexico may be deducted from gross receipts.

B. Receipts from preparing a payload 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" means a system, subsystem or other mechanical structure or material to be conveyed into space that is designed, constructed or intended to perform a function in space;

(2) "space" means any location beyond altitudes of sixty thousand feet above the earth's mean sea level;

(3) "space operations" means the process of commanding and controlling payloads in space; and

(4) "spaceport" means an installation and related facilities used for the launching, landing, operating, recovering, 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 4. A new section of the Gross Receipts and Compensating Tax Act, Section 7-9-54.5 NMSA 1978, is enacted to read:

"7-9-54.5. DEDUCTION--COMPENSATING TAX--SPACE-RELATED TEST ARTICLES.--

A. The value of space-related test articles used in New Mexico exclusively for research or testing, placing on public display after research or testing or storage for future research, testing or public display may be deducted in computing compensating tax due. This subsection does not apply to any other use of a space-related test article.

B. The value of equipment and materials used in New Mexico for research or testing, or for supporting the research or testing of, space-related test articles or for storage of such equipment or materials for research or testing, or supporting the research and testing of, space-related test articles may be deducted in computing compensating tax due. This subsection does not apply to any other use of such equipment and materials.

C. As used in this section, a "space-related test article" is a material or device intended to be used primarily in research or testing to determine properties and qualities of the material or properties, qualities or functioning of a device or technology when the principal use of the material, device or technology is intended to be in space or as part of, or associated with, a space vehicle."

Section 5. EFFECTIVE DATE.--The effective date of the

provisions of this act is July 1, 2003.

SENATE BILL 623, AS AMENDED

CHAPTER 63

CHAPTER 63, LAWS 2003

AN ACT

RELATING TO WATER; PROVIDING AUTHORITY FOR STATE ENGINEER PRIORITY ADMINISTRATION AND EXPEDITED WATER MARKETING AND LEASING.

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

Section 1. A new section of Chapter 72 NMSA 1978 is enacted to read:

"PRIORITY ADMINISTRATION--EXPEDITED WATER MARKETING AND LEASING--STATE ENGINEER.--

A. The legislature recognizes that the adjudication process is slow, the need for water administration is urgent, compliance with interstate compacts is imperative and the state engineer has authority to administer water allocations in accordance with the water right priorities recorded with or declared or otherwise available to the state engineer.

B. The state engineer shall adopt rules for priority administration to ensure that authority is exercised:

(1) so as not to interfere with a future or pending adjudication;

(2) so as to create no impairment of water rights, other than what is required to enforce priorities; and

(3) so as to create no increased depletions.

C. The state engineer shall adopt rules based on the appropriate hydrologic models to promote expedited marketing and leasing of water in those areas affected by priority administration. The rules shall be consistent with the rights, remedies and criteria established by law for proceedings for water use leasing and for changes in point of diversion, place of use and purpose of use of water rights. The rules shall not apply to acequias or community ditches or to water rights served by an acequia or community ditch.

D. Nothing in this section shall affect the partial final decree and settlement agreement as may be entered in the Carlsbad irrigation district project offer phase of *State of New Mexico ex rel. State Engineer v. Lewis, et al.*, Nos. 20294 and 22600 (N.M. 5th Jud. Dist.)."

SENATE BILL 551, AS AMENDED

CHAPTER 64

CHAPTER 64, LAWS 2003

AN ACT

RELATING TO CORRECTIONAL FACILITIES; INCREASING FEES FOR OUT-OF-STATE PRISONERS INCARCERATED IN PRIVATELY OPERATED CORRECTIONAL FACILITIES.

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

Section 1. Section 33-15-4 NMSA 1978 (being Laws 2001, Chapter 169, Section 4) is amended to read:

"33-15-4. CLASSIFICATION REVIEW OF OUT-OF-STATE INMATES IN PRIVATELY OPERATED CORRECTIONAL FACILITIES--ASSESSING A FEE.--

A. An out-of-state inmate shall not be incarcerated in a privately operated correctional facility in New Mexico unless the privately operated correctional facility is designed to meet or exceed the appropriate classification level for the out-of-state inmate.

B. The operator of a privately operated correctional facility that houses out-of-state inmates shall pay a fee, on a quarterly basis, to the county in which the privately operated correctional facility is located. The amount of the fee shall be a minimum of two dollars (\$2.00) per inmate per day for each out-of-state inmate who is incarcerated in the privately operated correctional facility."

SENATE BILL 653, AS AMENDED

CHAPTER 65

CHAPTER 65, LAWS 2003

AN ACT

RELATING TO TRANSPORTATION; ENACTING THE REGIONAL TRANSIT DISTRICT ACT; AUTHORIZING THE CREATION OF REGIONAL TRANSIT

DISTRICTS; PROVIDING THE POWERS AND DUTIES OF REGIONAL

TRANSIT DISTRICTS; PROVIDING FOR THE POWERS AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS; AUTHORIZING ISSUANCE OF BONDS; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Regional Transit District Act".

Section 2. PURPOSE.--The purpose of the Regional Transit District Act is to:

A. serve the public by providing for the creation of regional networks of safe and efficient public transit services;

B. allow multijurisdictional public transit systems to reduce the congestion of single-occupant motor vehicle traffic by providing transportation options for residents;

C. decrease automobile accidents by reducing traffic congestion on freeways and streets;

D. reduce noise and air pollution produced by motor vehicles;

E. prolong and extend the life of New Mexico's existing roadways by easing the traffic burden;

F. provide residents with a choice of transportation alternatives so that seniors, youth, low-income and mobility-impaired residents and others unable to drive or afford motor vehicles continue to have full access to the goods, services, jobs and activities of the community;

G. improve the New Mexico economy by increasing workforce and citizen access to education and higher paying jobs; and

H. prolong and extend petroleum resources.

Section 3. DEFINITIONS.--As used in the Regional Transit District Act:

- A. "board" means the board of directors of a district;
- B. "bond" means a revenue bond;
- C. "combination" means two or more governmental units that exercise joint authority;
- D. "commission" means the state transportation commission;
- E. "construct" or "construction" means the planning, designing, engineering, acquisition, installation, construction or reconstruction of a regional transit system;
- F. "district" means a regional transit district that is a political subdivision of the state created pursuant to the Regional Transit District Act;
- G. "governmental unit" means the state, a county or a municipality of the state or an Indian nation, tribe or pueblo located within the boundaries of the state;
- H. "regional transit system" means a property, improvement or system designed to be compatible with established state and local transportation plans that transports or conveys passengers within a region by means of a high-occupancy vehicle, including an automobile, truck, bus, van or railcar; and
- I. "revenues" means tolls, fees, rates, charges, assessments, grants, contributions or other income and revenues received by the district.

Section 4. CREATION OF DISTRICTS.--

A. A combination may create a district by contract. Upon the issuance by the commission of a certificate stating that the district has been duly organized according to the provisions of the Regional Transit District Act, the district may exercise the functions conferred by the provisions of that Act. The commission shall issue the certificate within thirty days of the filing with the commission of a copy of a contract that fulfills all the requirements set forth in this section and a copy of the bylaws and operating procedures of the district. The commission shall cause the certificate to be recorded in each county having territory included in the boundaries of the district. Upon issuance of the certificate by the commission, the district shall constitute a separate political subdivision of the state and shall have all of the duties, privileges, immunities, rights, liabilities and disabilities of a political subdivision.

B. A contract establishing a district shall specify the:

(1) name and purpose of the district and the regional transit systems to be provided;

(2) establishment and organization of the board in which all legislative power of the district is vested;

(3) manner of the appointment, term of service and qualifications, if any, of the directors and the procedure for filling vacancies;

(4) officers of the district, the manner of their appointment and their duties;

(5) voting requirements for action by the board;

(6) provisions for the distribution, disposition or division of the assets of the district;

(7) boundaries of the district, which shall not include territory:

(a) outside the boundaries of the members of the combination without the consent of the governing body of the governmental unit of the territory; or

(b) within the unincorporated boundaries of a county that is not a member of the combination as the unincorporated boundaries of the county exist on the date the district is created without the consent of the governing body of the county;

(8) term of the contract and the method by which it may be terminated or rescinded. The contract shall not be terminated or rescinded so long as the district has bonds outstanding;

(9) provisions for amendment of the contract;

(10) limitations on the powers granted by the Regional Transit District Act that may be exercised by the district; and

(11) conditions required when adding or deleting parties to the contract pursuant to Section 18 of the Regional Transit District Act.

C. A governmental unit shall not enter into a contract establishing a district without holding at least one public hearing in addition to other requirements imposed by law for public notice. The governmental unit shall give notice of the time, place and purpose of the public hearing by publication in a newspaper of general circulation in the governmental unit at least ten days prior to the date of the public hearing.

D. Upon the approval of the governor, the state may join in a contract creating a district. The number of directors of the board to which the state is entitled shall be established in the contract, but in no case shall the state be entitled to less than

one director. The governor shall appoint the director or directors representing the state on the board, for a term as established by the contract that created the district.

Section 5. BOARD.--

A. All powers, privileges and duties vested in or imposed upon the district shall be exercised and performed by the board. The board may delegate its powers by resolution to an officer or agent of the board, with the exception of the following:

- (1) adoption of board policies and procedures;
- (2) ratification of acquisition of land by negotiated sale;
- (3) initiation or continuation of legal action, not involving traffic or toll violations;
- (4) establishment of policies regarding fees, tolls, rates or charges;
- (5) approval of significant route or schedule changes affecting more than twenty-five percent of a regional transit system; and
- (6) issuance of bonds.

B. Only an elected official shall be able to vote on resolutions regarding Paragraphs (2) and (6) of Subsection A of this section.

C. The board shall promulgate and adhere to policies and procedures that govern its conduct and provide meaningful opportunities for public input. These policies shall include standards and procedures for calling emergency meetings.

D. The board shall be composed of at least one director from each governmental unit that is a member of the district. A director shall be an elected official or his designee. A governmental unit shall not have a majority of membership on the board, unless there are three or fewer participating governmental units in the district.

E. A director of the board shall not vote on an issue when the director has a conflict of interest. A director of the board, officer of the board or employee of the board shall not:

- (1) acquire a financial interest in a new or existing business venture or business property of any kind when he believes or has reason to believe that the new financial interest will be directly affected by his official act;
- (2) use confidential information acquired by virtue of his office or employment for his or another's private gain; or

(3) contract with the district without public notice and competitive bidding and full disclosure of his financial or other interest in the business that is party to the contract.

F. The attorney general shall investigate and prosecute, when appropriate, a complaint brought to his attention involving a violation of Subsection D of this section. Violation of the provisions of Subsection D of this section by a director of the board, officer of the board or employee of the board is grounds for removal or suspension of the director or officer and dismissal, demotion or suspension of the employee.

G. In addition to all other powers conferred by the Regional Transit District Act, the board may:

(1) adopt bylaws;

(2) fix the time and place of meetings and the method of providing notice of the meetings;

(3) make and pass orders and resolutions necessary for the government and management of the affairs of the district and the execution of the powers vested in the district;

(4) adopt and use a seal;

(5) maintain offices at a place as the board may designate;

(6) appoint, hire and retain employees, agents, engineers, attorneys, accountants, financial advisors, investment bankers and other consultants;

(7) prescribe, in accordance with the Procurement Code, methods for auditing and allowing or rejecting claims and demands for:

(a) the awarding of contracts for the construction of improvements, works or structures;

(b) the acquisition of equipment; or

(c) the performance or furnishing of labor, materials or supplies as may be required for carrying out the purposes of the Regional Transit District Act; and

(8) appoint advisory committees and define the duties of the committees.

Section 6. POWERS OF THE DISTRICT.--

A. A district is a body politic and corporate. In addition to other powers granted to the district pursuant to the Regional Transit District Act, the district may:

(1) have perpetual existence, except as otherwise provided in the contract;

(2) sue and be sued;

(3) enter into contracts and agreements affecting the affairs of the district;

(4) establish, collect and increase or decrease fees, tolls, rates or charges for the use of property of a regional transit system financed, constructed, operated or maintained by the district; except that fees, tolls, rates or charges imposed for the use of a regional transit system shall be fixed and adjusted to pay for bonds issued by the district;

(5) pledge all or a portion of the revenues to the payment of bonds of the district;

(6) finance, construct, operate or maintain regional transit systems within the boundaries of the district;

(7) purchase, trade, exchange, acquire, buy, sell, lease, lease with an option to purchase, dispose of and encumber real or personal property and interest therein, including easements and rights of way;

(8) accept real or personal property for the use of the district and accept gifts and conveyances upon the terms and conditions as the board may approve;

(9) use the streets, highways and other public ways and, with permission of the owner, to relocate or alter the construction of streets, highways, other public ways, electric and telephone lines and properties, pipelines, conduits and other properties, whether publicly or privately owned, if deemed necessary by the district in the construction, reconstruction, repair, maintenance and operation of the system. Any damage that may occur to the property shall be borne by the district; and

(10) provide transportation services outside the boundaries of the district.

B. After the creation of a district, the board may include property within or exclude property from the boundaries of the district in the manner provided in this section. Property shall not be included within the boundaries of the district unless it is within the boundaries of the members of the combination at the time of the inclusion. Property located within the boundaries of a governmental unit that is not a member of the combination as the boundaries of the governmental unit exist on the date the

property is included shall not be included without the consent of the governing body of the governmental unit. Prior to inclusion of property in or exclusion of property from the boundaries of the district, the board shall cause notice of the proposed inclusion or exclusion to be published in a newspaper of general circulation within the boundaries of the district and cause the notice to be mailed to the commission. The notice shall:

(1) describe the property to be included in or excluded from the boundaries of the district;

(2) specify the date, time and place at which the board shall hold a public hearing on the proposed inclusion or exclusion; provided that the date of the public hearing contained in the notice shall be not less than twenty days after publication of the notice; and

(3) state that persons having objections to the inclusion or exclusion may appear at the public hearing to object to the proposed inclusion or exclusion.

C. The board shall hear all objections to the proposed inclusion or exclusion at the time and place designated in the notice. The board, upon the affirmative vote of two-thirds of the directors, may adopt a resolution including or excluding all or a portion of the property described in the notice. Upon the adoption of the resolution, the property shall be included within or excluded from the boundaries of the district as set forth in the resolution. The board may adopt the resolution without amending the district's enabling contract. The board shall file the resolution with the commission, who shall cause the resolution to be recorded in the real estate records of each county having territory included in the boundaries of the district.

Section 7. TOLL COLLECTION.--

A. A district may promulgate rules regarding collection of fees, tolls, rates or charges. State and local law enforcement authorities may enter into traffic and toll enforcement agreements with a district.

B. A person who fails to pay a fee, toll, rate or charge required for the privilege of traveling on or using property included in a regional transit system may be assigned a fine of not more than one hundred fifty dollars (\$150) or not less than fifty dollars (\$50.00). The magistrate or metropolitan court where the offense took place shall have jurisdiction over actions brought pursuant to this subsection.

Section 8. BONDS.--

A. A district may issue bonds solely for the purpose of financing the purchase, construction, renovation, equipping or furnishing of a regional transit system project. The district shall issue the bonds pursuant to resolution of the board, and the bonds shall be payable solely out of all or a specified portion of the revenues as

designated by the board. Proceeds of the bonds may be used to pay expenses incurred in the preparation, issuance and sale of the bonds.

B. As provided in the resolution of the board under which the bonds are authorized to be issued, the bonds shall:

- (1) be executed and delivered by the district;
- (2) be in a form and denomination and include terms and maturities;
- (3) be subject to optional or mandatory redemption prior to maturity with or without a premium;
- (4) be in fully registered form or bearer form registrable as to principal or interest or both;
- (5) bear conversion privileges;
- (6) be payable in installments and at a time not exceeding forty years from the date of issuance;
- (7) be payable within or outside the state;
- (8) have the principal paid in yearly amounts beginning not later than two years from the date of issuance of the bonds;
- (9) be subject to purchase at the option of the holder or the district;
- (10) be executed by the officers of the district, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which signatures may be either of an officer of the district or of an agent authenticating the same;
- (11) be in the form of coupon bonds that have attached interest coupons bearing a manual or facsimile signature of an officer of the district; and
- (12) be sold at a net effective interest rate not exceeding the maximum net effective interest rate permitted by the Public Securities Act.

C. Bonds may be sold at public or private sale at a price, in a manner and at a time determined by the board, and the board may pay all fees, expenses and commissions that it deems necessary or advantageous in connection with the sale of the bonds. The power to fix the date of sale of the bonds, receive bids or proposals, award and sell bonds, fix interest rates and take all other action necessary to sell and

deliver the bonds may be delegated to an officer or agent of the district. Outstanding bonds may be refunded by the district as provided in the Public Securities Act.

D. A resolution authorizing the issuance of bonds may pledge all or a portion of the revenues of the district, may contain a provision for protecting and enforcing the rights and remedies of holders of the bonds as the district deems appropriate, may set forth the rights and remedies of the holders of the bonds and may contain provisions that the district deems appropriate for the security of the holders of the bonds.

E. A pledge of revenues or property made by a district or by a person or governmental unit with which a district contracts shall be valid and binding from the time the pledge is made. The revenues or property so pledged shall immediately be subject to the lien of the pledge without a physical delivery or further act, and the lien of the pledge shall be valid and binding against all parties having claims in tort or contract or otherwise against the pledging party, irrespective of whether the claiming party has notice of the lien.

F. Neither the directors of the board, employees of the district or a person executing the bonds shall be liable personally on the bonds or subject to personal liability or accountability by reason of the issuance of the bonds.

G. A district may purchase its bonds out of available funds and may hold, pledge, cancel or resell the bonds subject to and in accordance with agreements with the holders.

H. Bonds shall be payable solely from pledgeable revenue and shall not constitute an indebtedness or general obligation of the district, the state or other political subdivisions of the state.

I. The form and terms of bonds shall be approved by the state board of finance before issuance of the bonds.

Section 9. AGREEMENT OF THE STATE NOT TO LIMIT OR ALTER RIGHTS OF OBLIGEEES.--The state pledges and agrees with the holders of bonds issued under the Regional Transit District Act and with those parties who enter into contracts with a district or a member of a combination pursuant to the Regional Transit District Act that the state will not impair the rights vested in the district or the rights or obligations of a person with which the district contracts to fulfill the terms of an agreement made pursuant to the Regional Transit District Act. The state further agrees that it will not impair the rights or remedies of the holders of the bonds of a district until the bonds have been paid or until adequate provision

for payment has been made. A district may include this provision and undertaking for the state in bonds.

Section 10. INVESTMENTS.--A board may invest or deposit funds in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act. The board 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. The board shall keep accurate and complete records and accounts concerning the investment portfolio.

Section 11. EXEMPTION FROM TAXATION.--The income or other revenues of a district, all properties at any time owned by a district, all bonds issued by a district and the income from the bonds issued by a district are exempt from taxation in the state.

Section 12. COOPERATIVE POWERS.--A district may cooperate with a person to:

A. accept legitimate contributions or liens securing obligations of the district from the person with respect to the financing, construction, operation or maintenance of a regional transit system and, in connection with a loan or advance, enter into contracts establishing the repayment terms;

B. enter into contracts regarding the financing, construction, operation or maintenance of a specified regional transit system;

C. enter into joint operating contracts concerning a regional transit system;

D. acquire easements or rights of way for a regional transit system; and

E. designate a regional transit system as part of the state highway system, a county highway system or a municipal highway system if the person with jurisdiction over the applicable highway system consents to the designation.

Section 13. POWERS OF GOVERNMENTAL UNITS.--A governmental unit, for the purpose of aiding the financing, construction, operation or maintenance of a regional transit system, may:

A. sell, lease, loan, donate, grant, convey, assign, transfer and otherwise dispose to the district real or personal property or interests therein;

B. enter into agreements with a person for the joint financing, construction, operation or maintenance of a regional transit system. Upon compliance with applicable constitutional or charter limitations, the governmental unit may agree to make payments, without limitation as to amount except as set forth in the agreement, from revenues received from one or more fiscal years, to the district or a person to defray the costs of the financing, construction, operation or maintenance of a regional transit system; and

C. transfer to the district a contract that may have been awarded by the governmental unit for construction, operation or maintenance of a regional transit system.

Section 14. NOTICE--OPPORTUNITY FOR COMMENT.--

A. At least forty-five days prior to a meeting at which the board shall consider or take action on a proposal to request, establish, increase or decrease a rate, toll, fee or charge, the board shall deliver written notice of the meeting and proposal to a governmental unit where the proposed rate, toll, fee or charge will be imposed. The affected governmental unit shall be afforded a reasonable opportunity for comment, either at a regular meeting of the board or at a special meeting convened to receive comment.

B. At least seven business days prior to a regularly scheduled meeting, the board shall make available to the public written or electronic notice of the time and agenda of the meeting. The board shall designate during each meeting a public comment period and shall offer the public an opportunity to comment.

Section 15. NOTICE--COORDINATION OF INFORMATION.--

A. At least forty-five days prior to the imposition of or an increase in a rate, toll, fee or charge or prior to the issuance of bonds as authorized in the Regional Transit District Act, a notice specifying the amount of the fee, toll, rate or charge and its proposed duration or the value and number of bonds to be issued shall be sent to the commission and to the taxation and revenue department.

B. The commission shall file an annual report with the state auditor concerning the activities of all active districts. The report shall detail how many districts have been created, describe their boundaries and specify the regional transit systems that are being provided and how they are being financed.

Section 16. TAXATION.--A district has no direct taxation authority.

Section 17. ADDITION OR WITHDRAWAL OF TERRITORY BY A DISTRICT.--

A. After the creation of a district, a governmental unit adjacent to but not part of that district may join the district and determine the territorial area to become a part of that district. A two-thirds affirmative vote by the board shall be required before the governmental unit may join the district.

B. A governmental unit that is a member of a district may withdraw from the district by adopting a resolution to withdraw. The governmental unit shall withdraw its representative from the board. Real property owned by the district within the boundaries of the withdrawing governmental unit shall remain the property of the district. The provisions of withdrawal shall be negotiated and agreed to by the board, the governmental unit and the commission.

Section 18. MATCHING FUNDS.--The local government members of a combination shall match at least one dollar (\$1.00) for every four dollars (\$4.00) provided by the state. Before a district is able to receive state matching funds, it must be certified by the commission pursuant to Section 4 of the Regional Transit District Act.

SENATE BILL 34, AS AMENDED,

WITH CERTIFICATE OF CORRECTION

CHAPTER 66

CHAPTER 66, LAWS 2003

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR ELECTRONIC REPORTING AND RETRIEVAL OF INFORMATION; AMENDING THE CAMPAIGN REPORTING ACT.

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

Section 1. 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 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 to deliver by certified or registered mail, telecopier, electronic transmission 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 political committee includes:

(1) 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;

(2) a single individual who by his actions represents that he is a political committee; and

(3) a person or an organization of two or more persons that within one calendar year expends funds in excess of five hundred dollars (\$500) 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 or electronic format 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 2. Section 1-19-27 NMSA 1978 (being Laws 1979, Chapter 360, Section 3, as amended) is amended to read:

"1-19-27. REPORTS REQUIRED--PROPER FILING OFFICER.--

A. Except for those candidates who file a statement of exception in an election year pursuant to Section 1-19-33 NMSA 1978, all reporting individuals shall annually file with the proper filing officer a report of expenditures and contributions on a prescribed form. The report shall be filed on the second Monday in May pursuant to the provisions of Subsection A of Section 1-19-29 NMSA 1978.

B. The proper filing officer for filing reports of expenditures and contributions by a political committee is the secretary of state.

C. The proper filing officer for filing reports of expenditures and contributions or statements of exception is the secretary of state for all public officials.

D. The secretary of state shall develop or contract for services to develop an electronic reporting system for receiving and for public inspection of reports of expenditures and contributions and statements of exception to the Campaign Reporting Act. The electronic reporting system shall:

(1) enable a person to file reports on-line by filling out forms on the secretary of state's web site; and

(2) provide for encrypted transmissions."

Section 3. Section 1-19-29 NMSA 1978 (being Laws 1993, Chapter 46, Section 5, as amended by Laws 1997, Chapter 12, Section 1 and also by Laws 1997, Chapter 112, Section 3) 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 non-statewide 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.

H. Reports required by this section shall be filed electronically by all reporting individuals.

I. Reporting individuals may apply to the secretary of state for exemption from electronic filing in case of hardship, which shall be defined by the secretary of state."

Section 4. Section 1-19-32 NMSA 1978 (being Laws 1979, Chapter 360, Section 8, as amended) is amended to read:

"1-19-32. INSPECTION OF PUBLIC RECORDS.--

A. Each of the following documents is a public record open to public inspection during regular office hours in the office in which the document was filed or from which the document was issued:

- (1) a statement of exception;
- (2) a report of expenditures and contributions;
- (3) an advisory opinion issued by the secretary of state;
- (4) a document specified as a public record in the Campaign Reporting Act; and
- (5) an arbitration decision issued by an arbitration panel and filed with the secretary of state.

B. Each public record described in Subsection A of this section shall be retained by the state for five years and may be destroyed five years after the date of

filing unless a legal action or prosecution is pending that requires the preservation of the public record.

C. The secretary of state shall provide for electronic access to reports of expenditures and contributions and statements of exception submitted electronically by reporting individuals. Electronic access shall include access via the internet and shall be in an easily searchable format."

Section 5. EFFECTIVE DATE.--The effective date of the provisions of Sections 2 and 3 of this act is January 1, 2006.

SENATE BILL 22, AS AMENDED

CHAPTER 67

CHAPTER 67, LAWS 2003

AN ACT

RELATING TO WATER; PROVIDING PROTECTION FOR WATER RIGHTS CONSERVED AS A RESULT OF PUTTING WATER-SAVING TECHNIQUES INTO PRACTICE.

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

Section 1. Section 72-5-18 NMSA 1978 (being Laws 1907, Chapter 49, Section 43, as amended) is amended to read:

"72-5-18. WATER ALLOWANCE.--In the issuance of permits to appropriate water for irrigation or in the adjudication of the rights to the use of water for that purpose, the amount allowed shall be based upon beneficial use and in accordance with good agricultural practices and the amount allowed shall not exceed such amount. The state engineer shall permit the amount allowed to be diverted at a rate consistent with good agricultural practices and that will result in the most effective use of available water in order to prevent waste. Improved irrigation methods resulting in the conservation of water shall not affect an owner's water rights."

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE CONSERVATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 128

CHAPTER 68

CHAPTER 68, LAWS 2003

AN ACT

RELATING TO PUBLIC MASS TRANSPORTATION; REMOVING THE EXPENDITURE CAP ON FUNDS USED BY THE STATE HIGHWAY AND TRANSPORTATION DEPARTMENT.

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

Section 1. Section 67-3-70 NMSA 1978 (being Laws 1975, Chapter 343, Section 4, as amended) is amended to read:

"67-3-70. USE OF APPROPRIATED FUNDS.--The department may expend such portion of its appropriated funds as it deems necessary to effectuate the purposes of the Public Mass Transportation Act."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 561, AS AMENDED,

WITH CERTIFICATE OF CORRECTION

CHAPTER 69

CHAPTER 69, LAWS 2003

AN ACT

RELATING TO GAME AND FISH; AUTHORIZING THE ISSUANCE OF LIEUTENANT GOVERNOR'S DEER ENHANCEMENT PERMITS; MAKING AN APPROPRIATION.

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

Section 1. A new Section 17-3-16.3 NMSA 1978 is enacted to read:

"17-3-16.3. LIEUTENANT GOVERNOR'S DEER ENHANCEMENT PERMITS--ISSUANCE--USE.--

A. The state game commission shall direct the department of game and fish to authorize two deer enhancement permits each license year for the taking of two deer to raise funds for programs and projects to better manage deer.

B. The state game commission shall prescribe by rule the form, design and manner of issuance of the two deer enhancement permits. The issuance of one permit shall be subject to auction by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission, and shall be sold to the highest bidder. The issuance of the other permit shall be subject to a lottery by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission.

C. All money collected from the issuance and sale of the lieutenant governor's deer enhancement permits shall be credited to the game protection fund to be used exclusively for deer restoration and management."

SENATE BILL 560, AS AMENDED

CHAPTER 70

CHAPTER 70, LAWS 2003

AN ACT

RELATING TO TAXATION; GIVING A COUNTY THE OPTION TO IMPOSE THE COUNTY EMERGENCY COMMUNICATIONS AND EMERGENCY MEDICAL SERVICES TAX COUNTYWIDE OR ONLY IN THE AREA OF THE COUNTY OUTSIDE MUNICIPAL BOUNDARIES.

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

Section 1. Section 7-20E-22 NMSA 1978 (being Laws 2002, Chapter 14, Section 1) is amended to read:

"7-20E-22. COUNTY EMERGENCY COMMUNICATIONS AND EMERGENCY MEDICAL SERVICES TAX--AUTHORITY TO IMPOSE COUNTYWIDE OR ONLY IN THE COUNTY AREA--ORDINANCE REQUIREMENTS--USE OF REVENUE--ELECTION.--

A. The majority of the members of the governing body of an eligible county that does not have in effect a tax imposed pursuant to Subsection B of this section may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the county for the privilege of engaging in business. The tax imposed by this subsection may be referred to as the "countywide emergency communications and emergency medical services tax".

B. The majority of the members of the governing body of an eligible county that does not have in effect a tax imposed pursuant to Subsection A of this section may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the county area for the privilege of engaging in business. The tax imposed by this subsection may be referred to as the "county area emergency communications and emergency medical services tax".

C. The tax authorized in Subsections A and B of this section may be imposed in one or more increments of one-sixteenth percent not to exceed an aggregate rate of one-fourth percent. The tax shall be imposed for a period of not more than ten years from the effective date of the ordinance imposing the tax. Having once enacted an ordinance under this section, the governing body may enact subsequent ordinances for succeeding periods of not more than ten years, provided each such ordinance meets the requirements of the County Local Option Gross Receipts Taxes Act with respect to the tax imposed by this section.

D. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A or B of this section, shall dedicate the revenue to one or both of the following purposes:

(1) operation of an emergency communications center that has been determined by the local government division of the department of finance and administration to be a consolidated public safety answering point; or

(2) operation of emergency medical services provided by the county.

E. An ordinance imposing any increment of the countywide emergency communications and emergency medical services tax or the county area emergency communications and emergency medical services tax shall not go into effect until after an election is held and a majority of the voters voting in the election vote in favor of imposing the tax. In the case of an ordinance imposing an increment of the countywide emergency communications and emergency medical services tax, the election shall be conducted countywide. In the case of an ordinance imposing the county area emergency communications and emergency medical services tax, the election shall be conducted only in the county area. 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 voters as a separate question at a general election or at a special election called for that purpose by

the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated pursuant to Subsection D of this section. If a majority of the voters voting on the question approve the imposition of the countywide emergency communications and emergency medical services tax or the county area emergency communications and emergency medical services tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the tax fails, the governing body shall not again propose the imposition of any increment of either tax for a period of one year from the date of the election.

F. For the purposes of this section, "eligible county" means a county that operates or, pursuant to a joint powers agreement, is served by an emergency communications center that has been determined by the local government division of the department of finance and administration to be a consolidated public safety answering point."

HOUSE BILL 58, AS AMENDED

CHAPTER 71

CHAPTER 71, LAWS 2003

AN ACT

RELATING TO EDUCATION; REQUIRING THAT HIGH SCHOOL CURRICULA AND END-OF-COURSE TESTS BE ALIGNED WITH THE STATE'S TWO- AND FOUR-YEAR PUBLIC EDUCATIONAL INSTITUTIONS.

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

Section 1. A new section of the Public School Code is enacted to read:

"HIGH SCHOOL CURRICULA AND END-OF-COURSE TESTS--ALIGNMENT.--
High school curricula and end-of-course tests shall be aligned with the placement tests administered by two- and four-year public educational institutions in New Mexico.

The department of education shall collaborate with the commission on higher education in aligning high school curricula and end-of-course tests with the placement tests."

CHAPTER 72

CHAPTER 72, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING TIME FOR HOME VISITS AND PARENT-TEACHER CONFERENCES IN KINDERGARTEN THROUGH GRADE FIVE.

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

Section 1. Section 22-2-8.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 2, as amended) is amended to read:

"22-2-8.1. LENGTH OF SCHOOL DAY--MINIMUM.--

A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;

(2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and

(3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. Thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Twenty-two hours of grades one through five programs may be used for home visits by the teacher or for parent-teacher conferences.

C. Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A of this section.

D. The state superintendent may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the state board."

HOUSE BILL 68

CHAPTER 73

CHAPTER 73, LAWS 2003

AN ACT

RELATING TO FISCAL ESTIMATES; CREATING A DYNAMIC FORECASTING PILOT PROJECT TO USE ASSUMPTIONS ON BEHAVIORAL RESPONSES IN ESTIMATING THE FISCAL IMPACT OF CERTAIN LEGISLATION.

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

Section 1. Section 2-5-4.1 NMSA 1978 (being Laws 1979, Chapter 229, Section 1) is amended to read:

"2-5-4.1. LEGISLATIVE SYSTEMS--COORDINATION WITH OTHER AGENCIES--FISCAL IMPACT INFORMATION--DYNAMIC FORECASTING PILOT PROJECT.--

A. The legislative finance committee shall cooperate with the office of the governor, the department of finance and administration and the taxation and revenue department in designing a timely and accurate system of providing fiscal impact and other pertinent information to the legislature concerning pending legislation.

B. Beginning January 1, 2004, a two-year dynamic forecasting pilot project shall be conducted by the legislative finance committee, the department of finance and administration, the taxation and revenue department and the state highway and transportation department in which fiscal impact information provided to the legislature concerning legislation that proposes one or more changes to laws on taxation shall be prepared on the basis of assumptions that estimate the probable behavioral response of taxpayers, businesses and other persons to the proposed changes. This requirement applies only to legislation:

(1) introduced during the second session of the forty-sixth legislature and the first session of the forty-seventh legislature; and

(2) determined by the legislative finance committee, pursuant to a static fiscal estimate, to have a fiscal impact when fully implemented in excess of ten million dollars (\$10,000,000) in a fiscal year.

C. The legislative finance committee shall cooperate with the department of finance and administration and other necessary executive agencies to develop the methodology to implement the dynamic forecasting pilot project pursuant to the requirements of Subsection B of this section.

D. Following the first session of the forty-seventh legislature, the legislative finance committee shall evaluate the success of the dynamic forecasting pilot project required by Subsection B of this section and determine if dynamic forecasting should become a permanent feature of fiscal impact analyses. In making this determination, the legislative finance committee shall consider if this process:

(1) provides a reliable and reasonably accurate analytic tool to aid legislators in determining the effect of proposed legislation;

(2) can be accomplished with a reasonable amount of resources;
and

(3) can be incorporated into fiscal impact estimates in a form that is easily understood and usable."

HOUSE BILL 28, AS AMENDED

CHAPTER 74

CHAPTER 74, LAWS 2003

AN ACT

RELATING TO CAPITAL PROJECTS; PROVIDING LEGISLATIVE AUTHORIZATION FOR THE NEW MEXICO FINANCE AUTHORITY TO MAKE LOANS FOR PUBLIC PROJECTS FROM THE PUBLIC PROJECT REVOLVING FUND; DECLARING AN EMERGENCY.

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

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:

1. to the Alamo Navajo schools in Socorro county for building and equipment acquisition projects;
2. to the Alamogordo municipal schools in Otero county for building and equipment acquisition projects;
3. to Albuquerque in Bernalillo county for police vehicles acquisition, law enforcement equipment, vehicle and equipment acquisitions, infrastructure and building projects and a special assessment district;
4. to the Albuquerque public schools in Bernalillo county for building and equipment acquisition projects;
5. to the Albuquerque technical-vocational institute in Bernalillo county for building and equipment acquisition projects;
6. to the all Indian pueblo council for building, equipment and infrastructure projects;
7. to Angel Fire in Colfax county for a law enforcement vehicle project and vehicle acquisition projects;
8. to Artesia in Eddy county for a refinancing project;
9. to the Artesia public schools in Eddy county for building and equipment acquisition projects and a refinancing project;
10. to Aztec in San Juan county for water projects and a refinancing project;
11. to Bayard in Grant county for police vehicles and water and sewer projects;
12. to the Belen consolidated schools in Valencia county for building and equipment acquisition projects;
13. to the Berino mutual domestic water consumers association in Dona Ana county for a water project, phases I and 2, and an equipment acquisition purchase project;
14. to the Bernalillo public schools in Sandoval county for building and equipment acquisition projects;
15. to the Bloomfield public schools in San Juan county for a building acquisition project;

16. to Bloomfield in San Juan county for water and building acquisition projects;

17. to Bosque Farms in Valencia county for vehicle and equipment acquisition projects;

18. to the Capitan municipal schools in Lincoln county for building and equipment acquisition projects;

19. to Carlsbad in Eddy county for a building acquisition project;

20. to the Carrizozo municipal schools in Lincoln county for building and equipment acquisition projects;

21. to the Catron county-Coyote Creek volunteer fire department for a building acquisition project;

22. to Catron county-Glenwood fire and rescue for a class A pumper truck acquisition project;

23. to Catron county-Wild Horse Mountain fire department for vehicle and equipment acquisition projects;

24. to the Central consolidated schools in San Juan county for building and equipment acquisition projects;

25. to the Chama valley independent schools in Rio Arriba county for building and equipment acquisition projects;

26. to the Chaves county fire district number 8 for a building acquisition project;

27. to the Chaves county-Berrendo fire department for equipment acquisition and building projects;

28. to the Cibola county-Lobo Canyon volunteer fire department for a fire pumper truck acquisition project;

29. to Cimarron in Colfax county for vehicle, building and equipment acquisition projects;

30. to the Cimarron municipal schools in Colfax county for building and equipment acquisition projects;

31. to the Clayton public schools in Union county for building and equipment acquisition projects;

32. to Cloudcroft in Otero county for a grader acquisition project;
33. to Clovis community college in Curry county for building and equipment acquisition projects;
34. to Clovis in Curry county for a refinancing project and water, road and infrastructure projects;
35. to the Clovis municipal schools in Curry county for a refinancing project;
36. to the Cochiti Lake fire department in Sandoval county for vehicle and equipment acquisition projects;
37. to Corona in Lincoln county for vehicle and equipment acquisition projects;
38. to the Corona public schools in Lincoln county for building and equipment acquisition projects;
39. to the Crownpoint institute of technology in McKinley county for building and equipment acquisition projects;
40. to the Cuba independent schools in Sandoval county for building and equipment acquisition projects;
41. to Deming in Luna county for vehicle and equipment acquisition projects;
42. to the Deming public schools in Luna county for building and equipment acquisition projects;
43. to the Des Moines municipal schools in Union county for building and equipment acquisition projects;
44. to the Dexter consolidated schools in Chaves county for building and equipment acquisition projects;
45. to Dine college, Crownpoint center, in McKinley county for building and equipment acquisition projects;
46. to Dine college, Shiprock, in San Juan county for building and equipment acquisition projects;
47. to Dona Ana county for water and wastewater projects;

48. to the Dona Ana mutual domestic water consumers association in Dona Ana county for water and wastewater projects;
49. to the Dora consolidated schools in Roosevelt county for building and equipment acquisition projects;
50. to the Dulce independent schools in Rio Arriba county for building and equipment acquisition projects;
51. to eastern New Mexico university in Roosevelt county for building and equipment acquisition projects;
52. to eastern New Mexico university, Ruidoso branch, in Lincoln county for building and equipment acquisition projects;
53. to Edgewood in Santa Fe county for a building acquisition project;
54. to the eight northern Indian pueblos council in Santa Fe county for a building project, an aircraft project and an equipment acquisition project;
55. to the Elida municipal schools in Roosevelt county for building and equipment acquisition projects;
56. to Espanola in Santa Fe and Rio Arriba counties for water and wastewater projects and a building acquisition project;
57. to the Espanola public schools in Santa Fe and Rio Arriba counties for building and equipment acquisition projects;
58. to Estancia in Torrance county for a building acquisition project;
59. to the Estancia municipal schools in Torrance county for building and equipment acquisition projects;
60. to the Eunice public schools in Lea county for building and equipment acquisition projects;
61. to Fort Sumner in De Baca county for a correctional facility project;
62. to the Fort Sumner municipal schools in De Baca county for building and equipment acquisition projects;
63. to the Gadsden independent schools in Dona Ana county for building and equipment acquisition projects;

64. to Gallup in McKinley county for water, wastewater, building infrastructure and refinancing projects;
65. to the Gallup-McKinley county public schools for building and equipment projects and a refinancing project;
66. to the Gamarco townsite water and sanitation district in McKinley county for a water storage tank project;
67. to the Grady municipal schools in Curry county for building and equipment acquisition projects;
68. to the Grant county solid waste authority for a refinancing project;
69. to Grants in Cibola county for acquisition of water rights and a water project;
70. to Grants in Cibola county for a refinancing project;
71. to the Grants-Cibola schools in Cibola county for a building acquisition project;
72. to the Green Ridge mutual domestic water consumers association in Bernalillo county for a water project;
73. to Hagerman in Chaves county for a wastewater project;
74. to the Hagerman municipal schools in Chaves county for building and equipment acquisition projects;
75. to the Hatch Valley public schools in Dona Ana county for building and equipment acquisition projects;
76. to the Hidalgo county-Cotton City fire department for vehicle and equipment acquisition projects;
77. to the Hidalgo county-Gila Neblett fire department for vehicle and equipment acquisition projects;
78. to the Hidalgo county-Hidalgo number 1 fire department for vehicle and equipment acquisition projects;
79. to the Hidalgo county-Playas fire department for vehicle and equipment acquisition projects;

80. to the Hidalgo county-Rodeo fire department for vehicle and equipment acquisition projects;

81. to Hobbs in Lea county for equipment, infrastructure and building projects;

82. to the Hobbs municipal schools in Lea county for building and equipment acquisition projects;

83. to the Hondo Valley public schools in Lincoln county for building and equipment acquisition projects;

84. to the House municipal schools in Quay county for building and equipment acquisition projects and a refinancing project;

85. to the institute of American Indian arts in Santa Fe county for building and equipment acquisition projects;

86. to the Jal public schools in Lea county for building and equipment acquisition projects;

87. to the Jemez Mountain public schools in Rio Arriba county for building and equipment acquisition projects;

88. to the Jemez Springs domestic water association in Sandoval county for a water project;

89. to the Jemez Valley public schools in Sandoval county for building and equipment acquisition projects;

90. to the Jicarilla Apache Nation in Rio Arriba and Sandoval counties for building, infrastructure and equipment acquisition projects;

91. to the Pueblo of Laguna in Cibola county for refinancing, building, equipment acquisition, infrastructure, utility and water projects;

92. to Lake Arthur in Chaves county for vehicle and equipment acquisition projects;

93. to the Lake Arthur municipal schools in Chaves county for building and equipment acquisition projects;

94. to Las Cruces in Dona Ana county for a water project;

95. to Las Vegas in San Miguel county for building and equipment acquisition projects;

96. to the west Las Vegas public schools in San Miguel county for building and equipment acquisition projects;

97. to the Las Vegas city schools in San Miguel county for building and equipment acquisition projects;

98. to the Lincoln county-Bonito fire department for vehicle and equipment acquisition projects;

99. to Logan in Quay county for wastewater and fire protection equipment projects;

100. to the Logan municipal schools in Quay county for building and equipment acquisition projects;

101. to Lordsburg in Hidalgo county for a garbage truck project;

102. to the Lordsburg municipal schools in Hidalgo county for building and equipment acquisition projects;

103. to Los Lunas in Valencia county for vehicle and equipment acquisition projects;

104. to the Los Lunas public schools in Valencia county for building and equipment acquisition projects;

105. to the Loving municipal schools in Eddy county for building and equipment acquisition projects;

106. to the Luna community college in San Miguel county for building and equipment acquisition projects;

107. to the Luna county-Cooks Peak fire department for an equipment acquisition project;

108. to the Luna county-Florida Mountain fire department for equipment acquisition and building projects;

109. to the Magdalena municipal schools in Socorro county for building and equipment acquisition projects;

110. to the Maxwell municipal schools in Colfax county for building and equipment acquisition projects;

111. to the Melrose public schools in Curry county for building and equipment acquisition projects;

112. to Mesalands community college in Quay county for building and equipment acquisition projects;

113. to the Mesa Vista consolidated schools in Taos county for building and equipment acquisition projects;

114. to Mesilla in Dona Ana county for building and equipment acquisition projects;

115. to the miners' Colfax medical center in Colfax county for building and equipment projects;

116. to Milan in Cibola county for a water project;

117. to the Mora county-Golondrinas fire department for equipment acquisition, building and refinancing projects;

118. to the Mora county-Chacon fire department for vehicle and equipment acquisition projects;

119. to the Mora county-Rainsville fire department for vehicle and equipment acquisition projects;

120. to the Mora county-Watrous fire department for vehicle and equipment acquisition projects;

121. to the Mora independent schools in Mora county for building and equipment acquisition projects;

122. to the Moriarty municipal schools in Torrance county for building and equipment acquisition projects;

123. to the Mosquero municipal schools in Harding county for building and equipment acquisition projects;

124. to the Mountainair public schools in Torrance county for building and equipment acquisition projects;

125. to the Nambe Pueblo development corporation in Santa Fe county for wastewater and water projects;

126. to New Mexico highlands university in San Miguel county for building and equipment acquisition projects;

127. to the New Mexico institute of mining and technology in Socorro county for building and equipment acquisition projects;

128. to the New Mexico junior college in Lea county for building and equipment acquisition projects;

129. to the New Mexico military institute in Chaves county for building and equipment acquisition projects;

130. to the New Mexico school for the deaf in Santa Fe county for building and equipment acquisition projects;

131. to the New Mexico school for the visually handicapped in Otero county for building and equipment acquisition projects;

132. to New Mexico state university in Dona Ana county for building and equipment acquisition projects;

133. to New Mexico state university, Alamogordo branch, in Otero county for building and equipment acquisition projects;

134. to New Mexico state university, Dona Ana branch, in Dona Ana county for building and equipment acquisition projects;

135. to New Mexico state university, Carlsbad branch, in Eddy county for building and equipment acquisition projects;

136. to New Mexico state university, Grants branch, in Cibola county for building and equipment acquisition projects;

137. to the north central solid waste authority in Rio Arriba county for solid waste and building projects;

138. to northern New Mexico state school in Rio Arriba county for building and equipment acquisition projects;

139. to Otero county for an equipment acquisition project;

140. to the Overlook water cooperative, incorporated in Sandoval county, for a water project;

141. to Pecos in San Miguel county for water and sewer projects;

142. to the Pecos independent schools in San Miguel county for building and equipment acquisition projects;

143. to the Penasco independent schools in Taos county for building and equipment acquisition projects;

144. to the Pojoaque Valley public schools in Santa Fe county for building and equipment acquisition projects;

145. to the Portales municipal schools in Roosevelt county for building and equipment acquisition projects and a refinancing project;

146. to the Quay county fire department for a fire pumper vehicle acquisition project;

147. to the Quay county-Porter fire department for a building acquisition project;

148. to Quay county conservancy district number 1 for vehicle and equipment acquisition projects;

149. to Quay county conservancy district number 3 for vehicle and equipment acquisition projects;

150. to the Quemado independent schools in Catron county for building and equipment acquisition projects;

151. to Questa in Taos county for a utility truck and police vehicle acquisition projects;

152. to the Questa independent schools in Taos county for building and equipment acquisition projects;

153. to Raton in Colfax county for a landfill project;

154. to the Raton public schools in Colfax county for building and equipment acquisition projects;

155. to the Reserve independent schools in Catron county for building and equipment acquisition projects;

156. to Rio Rancho in Sandoval county for building and water projects;

157. to Rio Rancho in Sandoval county for special assessment district projects;

158. to Rio Rancho public schools in Sandoval county for building and equipment acquisition projects;

159. to Roosevelt county general hospital for a building acquisition project;

160. to the Roosevelt county-Milnesand fire department for vehicle and equipment acquisition projects;

161. to Roswell in Chaves county for vehicle and equipment acquisitions and building renovation projects;

162. to the Roswell independent schools in Chaves county for building and equipment acquisition projects;

163. to the Roy municipal schools in Harding county for building and equipment acquisition projects;

164. to Ruidoso in Lincoln county for infrastructure projects and buildings, equipment and vehicles;

165. to San Jon in Quay county for fire equipment acquisition projects;

166. to the San Jon municipal schools in Quay county for building and equipment acquisition projects;

167. to San Juan college in San Juan county for building and equipment acquisition projects;

168. to San Miguel county-Conchas Dam fire and rescue for fire pumper and tanker acquisition projects;

169. to the San Miguel county-Pecos Canyon fire department for vehicle and equipment acquisition projects;

170. to the San Miguel county-Sapello/Rociada volunteer fire department for a fire pumper truck acquisition project;

171. to San Miguel county for a police vehicle and equipment acquisition project;

172. to San Miguel county-Rowe fire department for vehicle and equipment acquisition projects;

173. to San Miguel county-Tecolote volunteer fire department for a fire pumper truck acquisition project;

174. to the Pueblo of Santa Ana in Sandoval county for a building, infrastructure, wastewater, equipment acquisition and refinancing projects;

175. to Santa Fe county for infrastructure, land acquisition, refinancing and equipment acquisition projects;

176. to Santa Fe in Santa Fe county for an infrastructure refinancing project, equipment, vehicles and building and infrastructure projects;

177. to Santa Fe community college in Santa Fe county for building, equipment acquisition and natatorium projects;

178. to the Santa Fe Indian school in Santa Fe county for building, infrastructure and utilities projects;

179. to Santa Rosa in Guadalupe county for a bulldozer project;

180. to the Santa Rosa consolidated schools in Guadalupe county for building and equipment acquisition projects;

181. to the Sierra county-Lake Shore fire department for a building acquisition project;

182. to the Sierra county-Winston Chloride fire department for vehicle and equipment acquisition projects;

183. to Sierra county for equipment, infrastructure, land acquisition and building projects;

184. to the Silver consolidated schools in Grant county for building and equipment acquisition projects;

185. to Socorro in Socorro county for a pool project;

186. to the Socorro consolidated schools in Socorro county for a building acquisition project;

187. to the southwest Indian polytechnic institute in Bernalillo county for building and equipment acquisition projects;

188. to the Southside water users association in San Juan county for a water project;

189. to the Springer municipal schools in Colfax county for building and equipment acquisition projects;

190. to the Taos county-Amalia/Ventero volunteer fire department for a fire truck acquisition;

191. to Taos county for a police vehicle acquisition project, solid waste project and building, equipment, refinancing and road projects;

192. to Taos in Taos county for solid waste and equipment acquisition projects;

193. to the Taos municipal schools in Taos county for building and equipment acquisition projects;

194. to Tatum in Lea county for vehicle and equipment acquisition projects;

195. to the Tatum municipal schools in Lea county for building and equipment acquisition projects;

196. to Texico in Curry county for a fire truck and building acquisition projects;

197. to the Torrance county solid waste authority for building, refinancing, equipment acquisition, solid waste and recycling center projects;

198. to Truth or Consequences in Sierra county for equipment, building acquisition and refinancing projects;

199. to the Truth or Consequences municipal schools in Sierra county for building acquisition, equipment acquisition and refinancing projects;

200. to Tucumcari in Quay county for a water and wastewater project, refinancing and emergency medical equipment acquisition;

201. to the Tucumcari public schools in Quay county for building, equipment acquisition and refinancing projects;

202. to Tularosa in Otero county for a fire pumper truck acquisition project;

203. to the Tularosa municipal schools in Otero county for building and equipment acquisition projects;

204. to the Lea soil and water conservation district in Lea county for a building;

205. to the university of New Mexico in Bernalillo county for building and equipment acquisition projects;

206. to the university of New Mexico, Gallup branch, in McKinley county for building and equipment acquisition projects;

207. to the university of New Mexico, Los Alamos branch, in Los Alamos county for building and equipment acquisition projects;

208. to the university of New Mexico, Taos branch, in Taos county for building and equipment acquisition projects;
209. to the university of New Mexico, university of New Mexico hospital in Bernalillo county for a building project;
210. to the university of New Mexico, Valencia branch, in Valencia county for building and equipment acquisition projects;
211. to Vaughn in Guadalupe county for equipment acquisition projects;
212. to the Vaughn municipal schools in Guadalupe county for building and equipment acquisition projects;
213. to Virden in Hidalgo county for a fire pumper truck acquisition project;
214. to the Wagon Mound public schools in Mora county for building and equipment acquisition projects;
215. to the Williams acres water and sanitation district in San Juan county for water and wastewater projects;
216. to the Wilson Lakes mutual domestic water consumers association in Rio Arriba county for a water project;
217. to the Zuni public schools in McKinley county for building and equipment acquisition projects;
218. to the Solacito mutual domestic water consumers association in Santa Fe county for a water project;
219. to the Alcon mutual domestic water consumers association in San Miguel county for a water project;
220. to the Ribera mutual domestic water consumers association in San Miguel county for a water project;
221. to the east Pecos mutual domestic water consumers association in San Miguel county for a water project;
222. to the La Plata mutual domestic water consumers association in San Juan county for a water project;
223. to the Canoncito at Apache Canyon mutual domestic water consumers association in Santa Fe county for a water project;

224. to the lower Canoncito mutual domestic water consumers association in San Miguel county for a water project;

225. to the Canon de Carnuel land grant in Bernalillo county for infrastructure projects;

226. to the village of Reserve in Catron county for equipment and vehicle acquisition projects;

227. to Chaves county for vehicles and building and equipment projects;

228. to the village of Dexter in Chaves county for refinancing projects;

229. to Colfax county for building projects;

230. to the south central Colfax county hospital district in Colfax county for building and infrastructure projects;

231. to the city of Silver City in Grant county for water and wastewater projects;

232. to the Canadian river soil and water conservation district in Harding county for a water project;

233. to Hidalgo county for building projects;

234. to the Lincoln-Otero county solid waste authority in Lincoln and Otero counties for a new transfer station;

235. to the city and county of Los Alamos for road projects;

236. to Mora county for equipment and vehicle acquisition projects;

237. to the Guadalupita fire department in Mora county for building and equipment projects;

238. to the village of Chama in Rio Arriba county for refinancing projects;

239. to the city of Espanola in Rio Arriba county for road projects;

240. to the Jicarilla Apache Nation in Rio Arriba and Sandoval counties for road projects;

241. to Rio Arriba county for road projects;

242. to the Pueblo of San Ildefonso in Rio Arriba county for road projects;

243. to the Pueblo of San Juan in Rio Arriba county for road projects;
244. to the Pueblo of Santa Clara in Rio Arriba county for road projects;
245. to the village of Chama in Rio Arriba county for road projects;
246. to the village of Questa in Taos county for road projects;
247. to the Farmington municipal school district for building, equipment and refinancing projects;
248. to San Juan county for building projects;
249. to Northstar drinking water consumers and sewage works association in San Juan county for a refinancing project;
250. to the Turley-Manzanares ditch association/acequia in San Juan county for a water project;
251. to Sandoval county for solid waste projects;
252. to the energy, minerals and natural resources department for park improvement projects;
253. to the Pueblo of Pojoaque in Santa Fe county for road projects;
254. to the Pueblo of Tesuque in Santa Fe county for road projects;
255. to the Pueblo of Picuris in Taos county for road projects;
256. to the Pueblo of Taos in Taos county for road projects;
257. to the town of Taos and Taos county for buildings and infrastructure projects;
258. to the town of Taos in Taos county for road projects;
259. to the village of Red River in Taos county for road projects;
260. to Torrance county for equipment projects;
261. to Torrance county district two fire department for building and equipment projects;
262. to Torrance county district five fire department for building and equipment projects;

263. to the Bosque water cooperative in Valencia county for refinancing projects;

264. to the city of Deming in Luna county for a water project and a wastewater project;

265. to the Rowe mutual domestic water consumers association in San Miguel county for a water project;

266. to the Ramah Navajo chapter in McKinley county for a water project;

267. to the office of cultural affairs for building, equipment and remodeling projects;

268. to the city of Alamogordo in Otero county for a water project;

269. to the northwest New Mexico solid waste authority for an equipment acquisition project;

270. to Fort Sumner in DeBaca county for infrastructure, building and equipment projects;

271. to Conservancy fire district number 2 in Quay county for building and equipment projects;

272. to the Jordan fire department for equipment acquisition; and

273. to Taos Ski valley for infrastructure, water and wastewater projects.

Section 2. VOIDING OF AUTHORIZATION.--If a qualified entity listed in Section 1 of this act has not certified to the New Mexico finance authority by the end of fiscal year 2006 its desire to continue to pursue a loan from the public project revolving fund for a public project listed in that section, the legislative authorization granted to the New Mexico finance authority by Section 1 of this act to make a loan from the public project revolving fund to that qualified entity for that public project is void.

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

WITH EMERGENCY CLAUSE,

SIGNED MARCH 21, 2003

CHAPTER 75

CHAPTER 75, LAWS 2003

AN ACT

RELATING TO CRIMINAL JUSTICE; ESTABLISHING THE NEW MEXICO SENTENCING COMMISSION; EXPANDING DUTIES; MAKING AN APPROPRIATION.

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

Section 1. Section 9-3-10 NMSA 1978 (being Laws 1977, Chapter 257, Section 11, as amended) is amended to read:

"9-3-10. NEW MEXICO SENTENCING COMMISSION--CREATION--MEMBERSHIP--DUTIES.--

A. There is created the "New Mexico sentencing commission".

B. The New Mexico sentencing commission shall be composed of twenty-three members. Appointed members shall serve at the pleasure of the appointing authority. The commission shall reflect reasonable geographical and urban-rural balances and regard for the incidence of crime and the distribution and concentration of law enforcement services in the state. The commission shall consist of the following individuals or their designees:

(1) the attorney general;

(2) a district attorney appointed by the district attorneys association of New Mexico;

(3) the chief public defender;

(4) two district court judges, one of whom shall be a children's court judge, appointed by the district court judge's association of New Mexico;

(5) a judge from the court of appeals appointed by the chief judge of the court of appeals;

(6) the dean of the university of New Mexico school of law;

(7) the secretary of corrections;

(8) the secretary of public safety;

(9) the secretary of children, youth and families;

(10) a county sheriff appointed by the executive director of the New Mexico association of counties;

(11) two public members appointed by the governor, one of whom shall be designated as chairman of the New Mexico sentencing commission by the governor;

(12) three public members appointed by the president pro tempore of the senate;

(13) three public members appointed by the speaker of the house of representatives;

(14) two public members appointed by the chief justice of the supreme court;

(15) one public member who is Native American and a practicing attorney, appointed by the president of the state bar association; and

(16) one public member appointed by the governor who is a representative of a New Mexico victim organization.

C. A majority of the members of the New Mexico sentencing commission constitutes a quorum for the transaction of commission business.

D. The New Mexico sentencing commission shall:

(1) hold meetings at times and for periods as the commission deems necessary;

(2) hire staff as needed to assist the commission in the performance of its duties;

(3) prepare an annual budget;

(4) establish policies for the operation of the New Mexico sentencing commission and supervision of the activities of commission staff;

(5) advise the executive, judicial and legislative branches of government on policy matters relating to criminal and juvenile justice;

(6) make recommendations to the legislature concerning proposed changes to laws relating to the criminal and juvenile justice systems that the commission determines would improve those systems;

(7) annually assess, monitor and report to the legislature on the impact of any enacted sentencing standards and guidelines on state and local correctional resources and programs and the need for further sentencing reform;

(8) when developing proposed sentencing reform:

(a) study sentencing models in other jurisdictions;

(b) study the Criminal Sentencing Act, the Criminal Code and all other New Mexico statutes relating to criminal law, criminal sentencing, criminal procedure and probation and parole;

(c) review past studies or reports regarding proposed changes to the Children's Code, the Criminal Code, the Criminal Sentencing Act or other New Mexico statutes relating to criminal law, criminal sentencing, criminal procedure or probation and parole;

(d) study past and current criminal sentencing and release practices and create a statistical database for simulating the impact of various sentencing policies;

(e) study the full range of prison, nonprison and intermediate sanctions;

(f) determine the principal purpose for criminal sanctions;

(g) rank criminal offenses by degree of seriousness;

(h) determine the role of criminal history in making criminal sentencing decisions;

(i) define dispositional policy that determines when adult felony offenders are confined in state prisons and county jails or sentenced to nonprison and intermediate sanctions;

(j) establish the length of criminal sentences;

(k) establish the appropriate use of community service and fines;

(l) structure proposed sentencing guidelines to assure consistency in all aspects of criminal sentencing policy;

(m) assess the impact of commission recommendations to modify criminal sentencing policy on the availability of and need for correctional resources and programs;

(n) use the expertise of a national or state organization with experience in sentencing reform; and

(o) present proposed legislation or recommendations regarding sentencing reform to the appropriate legislative interim committee;

(9) monitor any enacted sentencing guidelines with respect to uniformity and proportionality;

(10) conduct research relating to the use and effectiveness of any enacted guidelines, prosecution standards, offense charging, plea bargaining, sentencing practices, probation and parole practices and any other matters relating to the criminal justice system;

(11) serve as a clearinghouse for the systematic collection, analysis and dissemination of information relating to felony offense charges, plea agreements, convictions, sentences imposed, incarceration time actually served and actual and projected inmate population in the state correctional system;

(12) review all proposed legislation that creates a new criminal offense, changes the classification of an offense or changes the range of punishments for an offense and make recommendations to the legislature as to whether proposed changes would improve the criminal and juvenile justice system; and

(13) contingent upon the availability of funding, provide impact estimates, incorporating prison population projections, on all proposed legislation that has the potential to affect correctional resources.

E. The members of the New Mexico sentencing commission shall be paid pursuant to the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance.

F. The New Mexico sentencing commission is administratively attached to the office of the governor."

Section 2. Section 9-3-10.1 NMSA 1978 (being Laws 1994, Chapter 19, Section 2) is amended to read:

"9-3-10.1. AUTHORITY TO REVIEW RECORDS OR INFORMATION--
EXCEPTIONS--RULES.--

A. The New Mexico sentencing commission is authorized to inspect, copy, receive and review all records, data and information in the possession of state, county and local government agencies, except records, data or information that:

(1) is privileged under the rules of evidence;

(2) compromises or tends to disclose any privileged record or information; or

(3) consists of reports, memoranda or other internal documents given to or communications made to a prosecutor or defense attorney in connection with the investigation, prosecution or defense of a criminal case.

B. The New Mexico sentencing commission shall promulgate rules setting forth procedures for inspecting, copying, receiving, reviewing and reporting records, data and information necessary to fulfill its duties. State, county and local government agencies shall assist the commission in obtaining the records, data and information necessary to fulfill the commission's duties. All records, data and information received or obtained by the commission shall have the same status with regard to access or release as when the records, data or information was in the possession of the entity from which the commission received it."

Section 3. Section 9-3-10.2 NMSA 1978 (being Laws 1994, Chapter 19, Section 3) is amended to read:

"9-3-10.2. AUTHORITY TO ACCEPT GRANTS OR DONATIONS.--The New Mexico sentencing commission may, in the name of the state, accept grants, donations or gifts to carry out its functions and purposes."

Section 4. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS DEDUCTIONS.--

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

(1) for a first degree felony, eighteen years imprisonment;

(2) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;

(3) for a second degree felony, nine years imprisonment;

(4) for a third degree felony resulting in the death of a human being, six years imprisonment;

(5) for a third degree felony, three years imprisonment; or

(6) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted of a first, second, third or fourth degree felony or a second or third degree felony resulting in the death of a human being, unless the court alters such sentence pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

C. The court shall include in the judgment and sentence of each person convicted of a first, second, third or fourth degree felony or a second or third degree felony resulting in the death of a human being and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony, fifteen thousand dollars (\$15,000);

(2) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars (\$12,500);

(3) for a second degree felony, ten thousand dollars (\$10,000);

(4) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000); or

(5) for a third or fourth degree felony, five thousand dollars (\$5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners."

Section 5. TEMPORARY PROVISION--SENTENCING REFORM.--
Contingent upon the availability of funding, in fiscal years 2004 and 2005, using the expertise of a national or state organization with experience in sentencing reform, the New Mexico sentencing commission shall develop sentencing reforms for the state and present recommended reforms to the legislature.

Section 6. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES IN LAW.--

A. On July 1, 2003, all personnel, appropriations, money, records, furniture, equipment and other personal and real property of the criminal and juvenile justice coordinating council shall be transferred to the New Mexico sentencing commission.

B. On July 1, 2003, all contracts and other obligations binding on the criminal and juvenile justice coordinating council shall be transferred to the New Mexico sentencing commission.

C. On July 1, 2003, all references in the law to the criminal and juvenile justice coordinating council shall be deemed to be references to the New Mexico sentencing commission.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 510, AS AMENDED

CHAPTER 76

[DOUBLE CLICK HERE TO VIEW A PDF FILE OF CHAPTER 76]

CHAPTER 76, LAWS 2003 WITH LINE-ITEM VETOES

AN ACT

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. SHORT TITLE.--This act may be cited as the "General Appropriation Act of 2003".

Section 2. DEFINITIONS.--As used in the General Appropriation Act of 2003:

A. "agency" means an office, department, agency, institution, board, bureau, commission, court, district attorney, council or committee of state government;

B. "efficiency" means the measure of the degree to which services are efficient and productive and is often expressed in terms of dollars or time per unit of output;

C. "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;

D. "explanatory" means information that can help users to understand reported performance measures and to evaluate the significance of underlying factors that may have affected the reported information;

E. "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;

F. "full-time equivalent" or "FTE" means one or more authorized positions that alone or together receives or receive compensation for not more than two thousand ninety-

six hours worked in fiscal year 2004. 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;

G. "general fund" means that fund created by Section 6-4-2 NMSA 1978 and includes federal Mineral Lands Leasing Act receipts and those payments made in accordance with the federal block grant and the federal Workforce Investment Act, but excludes the general fund operating reserve and the appropriation contingency fund;

H. "interagency transfers" means revenue, other than internal service funds, legally transferred from one agency to another;

I. "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 2003;

J. "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 2003;

(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;

K. "outcome" means the measure of the actual impact or public benefit of a program;

L. "output" means the measure of the volume of work completed, or the level of actual services or products delivered by a program;

M. "performance measure" means a quantitative or qualitative indicator used to assess a program;

N. "program" means a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives based on legislative authorization;

O. "quality" means the measure of the quality of a good or service produced and is often an indicator of the timeliness, reliability or safety of services or products produced by a program;

P. "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;

Q. "target" means the expected level of performance of a program's performance measures; and

R. "unforeseen federal funds" means a source of federal funds or an increased amount of federal funds that could not have been reasonably anticipated or known during the first session of the forty-sixth legislature and, therefore, could not have been requested by an agency or appropriated by the legislature.

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" are intergovernmental transfers and do not represent a portion of total state government appropriations. All information designated as "Total" or "Subtotal" is provided for information and amounts are not appropriations.

C. Amounts set out in Section 4 of the General Appropriation Act of 2003, or so much as may be necessary, are appropriated from the indicated source for expenditure in fiscal year 2004 for the objects expressed.

D. Unencumbered balances in agency accounts remaining at the end of fiscal year 2003 shall revert to the general fund by October 1, 2003, unless otherwise indicated in the General Appropriation Act of 2003 or otherwise provided by law.

E. Unencumbered balances in agency accounts remaining at the end of fiscal year 2004 shall revert to the general fund by October 1, 2004, unless otherwise indicated in the General Appropriation Act of 2003 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 2003, appropriations are made in that act for the expenditures of agencies and for other purposes as required by existing law for fiscal year 2004. If any other act of the first session of the forty-sixth legislature 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 2003 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 2004, 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 appropriation contingency fund or the state support reserve fund, as of the end of fiscal year 2004, 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.] [LINE-ITEM VETO]~~

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, grants, donations, bequests, insurance settlements, refunds, or payments into revolving funds which exceeds 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 2004, 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 2003 or another act of the first session of the forty-sixth legislature provides for additional employees.] [LINE-ITEM VETO]~~

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 2003 may be expended for payment of credit card invoices.

L. To prevent unnecessary spending, expenditures from the General Appropriation Act of 2003 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 2003, 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.

Section 4. FISCAL YEAR 2004 APPROPRIATIONS. -- [Under guidelines developed by the state budget division, in consultation with the legislative finance committee, each agency for which performance measures are established in this section shall file a report with the state budget division and the legislative finance committee analyzing the agency's performance relative to the performance measures and targets in this section. The reports shall be submitted quarterly for certain performance measures and after the end of fiscal year 2004 for the remaining measures. The state budget division, in consultation with the legislative finance committee, shall develop a list of key performance measures for quarterly reporting. The reports shall compare actual performance for the report period with targeted performance based on the level of funding appropriated. In developing guidelines for the submission of agency performance reports, the state budget division, in consultation with the legislative finance committee, shall establish standards for the reporting of variances between actual and targeted performance levels. The quarterly and year-end reports for the period ending June 30, 2004, shall be filed with the state budget division and the legislative finance committee on or before September 1, 2004.]

~~Unless explicitly stated otherwise, each of the program measures and the associated targets contained in this section reflect performance to be achieved for fiscal year 2004. In cases where there are no targets for output, outcome, efficiency or quality measures, agencies are expected to develop baseline data for fiscal year 2004 and to propose targets when submitting budget requests for fiscal year 2005.] [LINE-ITEM VETO]~~

Item	General Fund Funds	Other Intrnl Svc State Funds	Funds/Inter- Agency Trnsf	Federal Funds	Total/Target
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A. LEGISLATIVE

LEGISLATIVE COUNCIL SERVICE:

(1) Legislative building services:

Appropriations:

(a)	Personal services and				
	employee benefits	2,153.6		2,153.6	
(b)	Contractual services	100.2		100.2	
(c)	Other	889.7	889.7		

Authorized FTE: 51.00 Permanent; 3.00 Temporary

(2) Energy council dues:

Appropriations:	32.0				32.0
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(3) Legislative retirement:

Appropriations:	218.0				218.0
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Subtotal			3,393.5		
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TOTAL LEGISLATIVE	3,393.5			3,393.5	
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B. JUDICIAL

SUPREME COURT LAW LIBRARY:

The purpose of the supreme court law library program is to provide and produce legal information for all branches of state government, the legal community and the general public so that they may have equal access to the law, effectively address the courts, make laws, write regulations, better understand the legal system and conduct their affairs in accordance with the principles of law.

Appropriations:

(a)	Personal services and			
	employee benefits	510.9		510.9
(b)	Contractual services	328.0		328.0
(c)	Other	576.1		576.1

Authorized FTE: 8.00 Permanent

Performance measures:

- (a) Outcome: Percent of titles currently updated
- (b) Quality: Percent of staff time spent on shelving and updating library materials
- (c) Output: Number of web site hits 12,000
- (d) Output: Number of research requests 5,000
- Subtotal 1,415.0

NEW MEXICO COMPILATION COMMISSION:

The purpose of the New Mexico compilation commission program is to publish in print and electronic format, to distribute and to sell: (1) laws enacted by the legislature; (2) opinions of the supreme court and court of appeals; (3) rules approved by the supreme court; (4) attorney general opinions; and (5) other state and federal rules and opinions to ensure the accuracy and reliability of its publications.

Appropriations:

(a)	Personal services and			
	employee benefits	164.5		164.5
(b)	Contractual services	905.5	50.0	955.5
(c)	Other	143.9	28.0	171.9

Authorized FTE: 3.00 Permanent

Performance measures:

- (a) Output: Amount of revenue collected, in thousands \$1,215.0
- Subtotal 1,291.9

JUDICIAL STANDARDS COMMISSION:

The purpose of the judicial standards commission program is to provide a review process for the public addressing complaints involving judicial misconduct in order to preserve the integrity and impartiality of the judicial process.

Appropriations:

(a)	Personal services and		
	employee benefits	254.3	254.3
(b)	Contractual services	23.8	23.8
(c)	Other	80.9	80.9

Authorized FTE: 4.00 Permanent

Performance measures:

(a) Efficiency:	Average case duration rate, by meeting cycle	5
(b) Output:	Number of complaints received regarding judicial misconduct	900

Subtotal 359.0

COURT OF APPEALS:

The purpose of the court of appeals program is to provide access to justice, to resolve disputes justly and timely and to maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and		
	employee benefits	3,935.1	3,935.1
(b)	Contractual services	79.8	79.8
(c)	Other	325.6	325.6

Authorized FTE: 58.00 Permanent

Performance measures:

(a) Outcome:	Cases disposed as a percent of cases filed	95%
(b) Output:	Number of legal opinions written	

Subtotal 4,340.5

SUPREME COURT:

The purpose of the supreme court program is to provide access to justice, to resolve disputes justly and timely and to maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and			
	employee benefits	1,860.2		1,860.2
(b)	Contractual services	103.7		103.7
(c)	Other	160.5	160.5	

Authorized FTE: 29.00 Permanent

Performance measures:

- (a) Outcome: Cases disposed as a percent of cases filed 95%
- (b) Output: Number of legal opinions, decisions and dispositional orders written

Subtotal 2,124.4

ADMINISTRATIVE OFFICE OF THE COURTS:

(1) Administrative support:

The purpose of the administrative support program is to provide administrative support to the chief justice, all judicial branch units and the administrative office of the courts so that they can effectively administer the New Mexico court system.

Appropriations:

(a)	Personal services and			
	employee benefits	1,862.3	370.8	2,233.1
(b)	Contractual services	3,380.8	392.2	3,773.0
(c)	Other	3,039.4	1,050.0	112.7
				4,202.1
(d)	Other financing uses	1,237.0		1,237.0

Authorized FTE: 30.00 Permanent; 2.00 Term

Performance measures:

- (a) Outcome: Percent of jury summons successfully executed 92%
- (b) Quality: Percent of magistrate court financial reports submitted to fiscal services division and reconciled on a monthly basis 100%
- (c) Output: Average cost per juror \$200
- (d) Output: Number of required events attended by attorneys in abuse

and neglect cases 3,500

(e) Output: Number of monthly supervised child visitations conducted 500

(f) Output: Number of cases to which court-appointed special advocate
volunteers are assigned 1,275

(2) Statewide judiciary automation:

The purpose of the statewide judiciary automation program is to provide development, enhancement, maintenance and support for core court automation and usage skills for appellate, district, magistrate and municipal courts and ancillary judicial agencies.

Appropriations:

(a)	Personal services and			
	employee benefits	1,412.6	1,673.7	3,086.3
(b)	Contractual services	7.0	783.7	790.7
(c)	Other	2,793.0	2,793.0	

Authorized FTE: 35.50 Permanent; 11.00 Term

~~[Department of finance and administration shall reduce the general fund appropriation to the statewide judiciary automation program by five percent on December 15, 2003, if the department of finance and administration, in consultation with the legislative finance committee, determines that the program has not made measurable progress in eliminating duplicated and redundant jury pool names in the jury management system.] [LINE-ITEM VETO]~~

Performance measures:

(a) Quality: Percent of driving while intoxicated court reports that are
accurate 98%

(b) Quality: Percent reduction in number of calls for assistance from
judicial agencies regarding the case management database
and network 25%

(c) Quality: Average time to respond to automation calls for assistance,
in minutes 25

(d) Output: Number of help desk calls for assistance provided to the
judiciary 6,000

(3) Magistrate court:

The purpose of the magistrate court program is to provide access to justice, to resolve disputes justly and timely and to maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	12,093.9	1,318.5	206.8	13,619.2
(b)	Contractual services	73.9	17.0		90.9
(c)	Other	3,955.8	270.7	800.0	5,026.5

Authorized FTE: 262.00 Permanent; 49.00 Term

Performance measures:

(a) Outcome: Amount of bench warrant revenue collected annually, in millions \$1.6

(b) Efficiency: Cases disposed as a percent of cases filed 80%

(c) Output: Amount of criminal case fees and fines collected

Subtotal 36,851.8

SUPREME COURT BUILDING COMMISSION:

The purpose of the supreme court building commission is to retain custody, control, maintenance and preservation of the supreme court building and its grounds along with maintaining fixed assets records for furniture, fixtures and equipment acquired by the judiciary.

Appropriations:

(a)	Personal services and		
	employee benefits	418.3	418.3
(b)	Contractual services	83.3	83.3
(c)	Other	150.7	150.7

Authorized FTE: 12.00 Permanent

Performance measures:

(a) Quality: Accuracy of fixed assets inventory records 100%

Subtotal 652.3

DISTRICT COURTS:

(1) First judicial district:

The purpose of the first judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	3,720.3	116.6	151.4	3,988.3
(b)	Contractual services	390.1	31.8	96.7	518.6
(c)	Other	260.8	120.1	22.9	403.8

Authorized FTE: 68.50 Permanent; 5.50 Term

Performance measures:

- (a) Output: Cases disposed as a percent of cases filed
- (b) Output: Percent change in case filings by case type
- (c) Quality: Recidivism of adult drug court graduates
- (d) Efficiency: Cost per client for adult drug court participants
- (e) Quality: Recidivism of juvenile drug court graduates
- (f) Efficiency: Cost per client for juvenile drug court participants
- (g) Output: Number of adult drug court graduates
- (h) Outcome: Number of juvenile drug court graduates

(2) Second judicial district:

The purpose of the second judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and					
	employee benefits	14,114.8		526.1	457.7	15,098.6
(b)	Contractual services	209.5	1.3	39.3		250.1
(c)	Other	1,130.2	78.4	42.7		1,251.3

Authorized FTE: 276.50 Permanent; 18.00 Term

Performance measures:

- (a) Output: Cases disposed as a percent of cases filed
- (b) Output: Percent change in case filings by case type
- (c) Quality: Recidivism of adult drug court graduates
- (d) Efficiency: Cost per client for adult drug court participants
- (e) Quality: Recidivism of juvenile drug court graduates
- (f) Efficiency: Cost per client for juvenile drug court participants
- (g) Output: Number of adult drug court graduates
- (h) Output: Number of juvenile drug court graduates

(3) Third judicial district:

The purpose of the third judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and					
	employee benefits	2,915.0	208.1	54.7		3,177.8
(b)	Contractual services	492.0	31.5	147.0	53.5	724.0
(c)	Other	200.1	32.8	42.1	19.6	294.6

Authorized FTE: 62.75 Permanent; 9.30 Term

Performance measures:

- (a) Output: Cases disposed as a percent of cases filed
- (b) Output: Percent change in case filings by case type
- (c) Quality: Recidivism of adult drug court graduates
- (d) Efficiency: Cost per client for adult drug court participants
- (e) Quality: Recidivism of juvenile drug court graduates
- (f) Efficiency: Cost per client for juvenile drug court participants
- (g) Output: Number of adult drug court graduates
- (h) Output: Number of juvenile drug court graduates

(4) Fourth judicial district:

The purpose of the fourth judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and			
	employee benefits	948.6		948.6
(b)	Contractual services	11.7	14.7	26.4
(c)	Other	66.3	14.3	80.6
(d)	Other financing uses	35.0		35.0

Authorized FTE: 19.50 Permanent

Performance measures:

(a) Output: Cases disposed as a percent of cases filed

(b) Output: Percent change in case filings by case type

(5) Fifth judicial district:

The purpose of the fifth judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and			
	employee benefits	3,395.9		3,395.9
(b)	Contractual services	142.1	139.1	339.9
(c)	Other	299.9	30.0	329.9

Authorized FTE: 64.00 Permanent

Performance measures:

(a) Output: Cases disposed as a percent of cases filed

(b) Output: Percent change in case filings by case type

(6) Sixth judicial district:

The purpose of the sixth judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	1,035.9			1,035.9
(b)	Contractual services	197.5	16.4	74.0	287.9
(c)	Other	161.6	8.6		170.2

Authorized FTE: 26.50 Permanent

Performance measures:

- (a) Output: Cases disposed as a percent of cases filed
- (b) Output: Percent change in case filings by case type
- (c) Quality: Recidivism of juvenile drug court graduates
- (d) Efficiency: Cost per client for juvenile drug court participants
- (e) Output: Number of juvenile drug court graduates

(7) Seventh judicial district:

The purpose of the seventh judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	1,183.2			1,183.2
(b)	Contractual services	78.2		14.9	93.1
(c)	Other	142.9	10.0		152.9

Authorized FTE: 23.50 Permanent

Performance measures:

- (a) Output: Cases disposed as a percent of cases filed
- (b) Output: Percent change in case filings by case type

(8) Eighth judicial district:

The purpose of the eighth judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	1,200.0			1,200.0
(b)	Contractual services	309.6	55.0	85.6	450.2
(c)	Other	148.7		148.7	

Authorized FTE: 23.25 Permanent

Performance measures:

- (a) Output: Cases disposed as a percent of cases filed
- (b) Output: Percent change in case filings by case type
- (c) Quality: Recidivism of adult drug court graduates
- (d) Efficiency: Cost per client for adult drug court participants
- (e) Quality: Recidivism of juvenile drug court graduates
- (f) Efficiency: Cost per client for juvenile drug court participants
- (g) Output: Number of adult drug court graduates
- (h) Output: Number of juvenile drug court graduates

(9) Ninth judicial district:

The purpose of the ninth judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	1,398.3		257.3	1,655.6
(b)	Contractual services	135.8	28.5	133.3	297.6
(c)	Other	219.0	23.5	33.2	275.7

Authorized FTE: 24.50 Permanent; 3.50 Term

Performance measures:

(a) Output: Cases disposed as a percent of cases filed

(b) Output: Percent change in case filings by case type

(10) Tenth judicial district:

The purpose of the tenth judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and			
	employee benefits	490.4		490.4
(b)	Contractual services	8.5		8.5
(c)	Other	54.9	54.9	
(d)	Other financing uses	15.0		15.0

Authorized FTE: 9.10 Permanent

Performance measures:

(a) Output: Cases disposed as a percent of cases filed

(b) Output: Percent change in case filings by case type

(11) Eleventh judicial district:

The purpose of the eleventh judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	2,800.8		35.7	2,836.5
(b)	Contractual services	84.6	49.9	92.5	196.5
(c)	Other	396.4	35.6	28.2	460.2

Authorized FTE: 55.00 Permanent; 3.00 Term

Performance measures:

(a) Output: Cases disposed as a percent of cases filed

(b) Output: Percent change in case filings by case type

- (c) Quality: Recidivism of adult drug court graduates
- (d) Efficiency: Cost per client for adult drug court participants
- (e) Output: Number of domestic violence parties completing counseling
- (f) Output: Number of grade court clients completing school or
obtaining a general equivalency diploma
- (g) Output: Number of cases resolved with mediation
- (h) Output: Number of clients served who are self-represented litigants
- (i) Quality: Recidivism of juvenile drug court graduates
- (j) Efficiency: Cost per client for juvenile drug court participants
- (k) Output: Number of adult drug court graduates
- (l) Output: Number of juvenile drug court graduates

(12) Twelfth judicial district:

The purpose of the twelfth judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and					
	employee benefits	1,568.4		63.8		1,632.2
(b)	Contractual services	6.0	26.0	75.5	195.9	303.4
(c)	Other	170.0	20.0	69.2		259.2

Authorized FTE: 30.50 Permanent; 1.50 Term

Performance measures:

- (a) Output: Cases disposed as a percent of cases filed
- (b) Output: Percent change in case filings by case type
- (c) Quality: Recidivism of juvenile drug court participants
- (d) Efficiency: Cost per client for juvenile drug court participants
- (e) Output: Number of juvenile drug court graduates

(13) Thirteenth judicial district:

The purpose of the thirteenth judicial district court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and					
	employee benefits	2,559.2		51.2		2,610.4
(b)	Contractual services	47.7	51.0	59.9	109.4	268.0
(c)	Other	284.5	4.0	5.3		293.8

Other financing uses 3.2 3.2 The general fund appropriation to the thirteenth judicial district court program includes two hundred seventy-five thousand dollars (\$275,000) for an additional judgeship and associated costs contingent on enactment of Senate Bill 917 or similar legislation of the first session of the forty-sixth legislature.

Authorized FTE: 52.00 Permanent; 1.00 Term

Performance measures:

- (a) Output: Cases disposed as a percent of cases filed
- (b) Output: Percent change in case filings by case type
- (c) Quality: Recidivism of juvenile drug court graduates
- (d) Efficiency: Cost per client for juvenile drug court participants
- (e) Output: Number of juvenile drug court graduates

Subtotal 47,754.8

BERNALILLO COUNTY METROPOLITAN COURT:

The purpose of the Bernalillo county metropolitan court program is to provide access to justice, to resolve disputes justly and timely and to maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and					
	employee benefits	11,326.6		811.9	714.6	12,853.1
(b)	Contractual services	983.3	432.4	200.0		1,615.7
(c)	Other	2,157.3	320.8	32.6		2,510.7

Authorized FTE: 247.00 Permanent; 40.00 Term; 1.50 Temporary

Performance measures:

(a) Outcome: Amount of bench warrant revenue collected annually \$650,000

(b) Outcome: Cases disposed as a percent of cases filed 80%

(c) Output: Amount of criminal case fees and fines collected, in millions \$1.7

(d) Efficiency: Cost per client for adult drug court participants \$3,500

(e) Quality: Recidivism of adult drug court graduates 12%

(f) Outcome: Number of active cases pending

(g) Output: Number of adult drug court graduates

Subtotal 16,979.5

DISTRICT ATTORNEYS:

(1) First judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within the first judicial district.

Appropriations:

(a)	Personal services and				
	employee benefits	2,906.0	109.6	575.6	3,591.2
(b)	Contractual services	12.5		393.0	405.5
(c)	Other	226.9	91.6	318.5	

Authorized FTE: 55.00 Permanent; 16.00 Term

Performance measures:

(a) Outcome: Percent of cases dismissed on the six-month rule <5%

(b) Output: Number of cases dismissed on the six-month rule <130

(c) Efficiency: Average time from filing of petition to the final disposition, in months 6

(d) Efficiency: Average attorney caseload 433

(e) Output: Number of cases prosecuted 2,600

(f) Output: Number of cases referred for screening 4,400

(2) Second judicial district:

The purpose of the prosecution program is to enforce, improve and ensure the protection, safety, welfare and health of the citizens within the second judicial district by providing administrative, special programs and litigative support.

Appropriations:

(a)	Personal services and				
	employee benefits	11,670.9	529.2	388.4	12,588.5
(b)	Contractual services	94.5		94.5	
(c)	Other	888.0	888.0		

Authorized FTE: 231.00 Permanent; 28.00 Term

Performance measures:

(a) Outcome:	Percent of cases dismissed on the six-month rule	<1%
(b) Output:	Number of cases dismissed on the six-month rule	<186
(c) Efficiency:	Average time from filing of petition to the final disposition, in months	8.85
(d) Efficiency:	Average attorney caseload	490
(e) Output:	Number of cases prosecuted	18,551
(f) Output:	Number of cases referred for screening	26,237

(3) Third judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Dona Ana county.

Appropriations:

(a)	Personal services and				
	employee benefits	2,407.0	101.7	938.0	3,446.7
(b)	Contractual services	26.7		86.4	113.1
(c)	Other	178.1	8.4	37.5	224.0

Authorized FTE: 46.00 Permanent; 17.00 Term

Performance measures:

(a) Outcome:	Percent of cases dismissed on the six-month rule	<.5%
(b) Output:	Number of cases dismissed on the six-month rule	<17

(c) Efficiency: Average time from filing of petition to the final disposition, in months 6

(d) Efficiency: Average attorney caseload 130

(e) Output: Number of cases prosecuted 3,250

(f) Output: Number of cases referred for screening 4,000

(4) Fourth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the fourth judicial district attorney to enforce, improve and ensure the protection, safety, welfare and health for the citizens of Mora, San Miguel and Guadalupe counties.

Appropriations:

(a)	Personal services and employee benefits	1,799.5	175.8	1,975.3
(b)	Contractual services	51.5		51.5
(c)	Other	151.1	151.1	

Authorized FTE: 31.50 Permanent; 3.30 Term

Performance measures:

(a) Outcome: Percent of cases dismissed on the six-month rule <2.25%

(b) Output: Number of cases dismissed on the six-month rule <33

(c) Efficiency: Average time from filing of petition to the final disposition, in months 6

(d) Efficiency: Average attorney caseload 156

(e) Output: Number of cases prosecuted 1,466

(f) Output: Number of cases referred for screening 5,272

(5) Fifth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the fifth judicial district attorney to enforce, improve and ensure the protection, safety, welfare and health for the citizens in Eddy, Lea and Chaves counties.

Appropriations:

(a) Personal services and

	employee benefits	2,492.6	32.7	94.3	2,619.6
(b)	Contractual services	115.5			115.5
(c)	Other	262.5	.8	263.3	

Authorized FTE: 48.00 Permanent; 3.00 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed on the six-month rule 0%
- (b) Output: Number of cases dismissed on the six-month rule 0
- (c) Efficiency: Average time from filing of petition to the final disposition, in months 7.2
- (d) Efficiency: Average attorney caseload 200
- (e) Output: Number of cases prosecuted 3,000
- (f) Output: Number of cases referred for screening 3,200

(6) Sixth judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens in Grant, Hidalgo, and Luna counties.

Appropriations:

(a)	Personal services and				
	employee benefits	1,372.5	223.5	218.5	1,814.5
(b)	Contractual services	33.9			33.9
(c)	Other	148.9	2.5	11.8	163.2

Authorized FTE: 26.00 Permanent; 9.00 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed on the six-month rule <5%
- (b) Output: Number of cases dismissed on the six-month rule <90
- (c) Efficiency: Average time from filing of petition to the final disposition, in months 6
- (d) Efficiency: Average attorney caseload 150

Authorized FTE: 29.00 Permanent

Performance measures:

- (a) Outcome: Percent of cases dismissed on the six-month rule <5%
- (b) Output: Number of cases dismissed on the six-month rule <94
- (c) Efficiency: Average time from filing of petition to the final disposition, in months 8
- (d) Efficiency: Average attorney caseload 209
- (e) Output: Number of cases prosecuted 1,881
- (f) Output: Number of cases referred for screening 2,667

(9) Ninth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the ninth judicial district attorney to enforce, improve and ensure the protection, safety, welfare and health of the citizens in Curry and Roosevelt counties.

Appropriations:

- (a) Personal services and employee benefits 1,585.6 1,585.6
- (b) Contractual services 7.4 4.3 11.7
- (c) Other 136.9 12.0 148.9

Authorized FTE: 30.00 Permanent; 1.00 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed on the six-month rule <5%
- (b) Output: Number of cases dismissed on the six-month rule <63
- (c) Efficiency: Average time from filing of petition to the final disposition, in months 4
- (d) Efficiency: Average attorney caseload 200
- (e) Output: Number of cases prosecuted 1,693
- (f) Output: Number of cases referred for screening 2,038

(10) Tenth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the tenth judicial district attorney to enforce, improve and ensure the protection, safety, welfare and health of the citizens in Quay, Harding and De Baca counties.

Appropriations:

(a)	Personal services and			
	employee benefits	592.0		592.0
(b)	Contractual services	3.2		3.2
(c)	Other	62.4	62.4	

Authorized FTE: 10.00 Permanent

Performance measures:

(a) Outcome:	Percent of cases dismissed on the six-month rule	<1%
(b) Output:	Number of cases dismissed on the six-month rule	<14
(c) Efficiency:	Average time from filing of petition to the final disposition, in months	6
(d) Efficiency:	Average attorney caseload	702
(e) Output:	Number of cases prosecuted	1,349
(f) Output:	Number of cases referred for screening	2,045

(11) Eleventh judicial district-Farmington office:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the eleventh judicial district attorney, division I, to enforce, improve and ensure the protection, safety, welfare and health of the citizens of San Juan county.

Appropriations:

(a)	Personal services and				
	employee benefits	2,116.3	147.8	116.6	2,380.7
(b)	Contractual services	5.8			5.8
(c)	Other	130.3	1.9	13.5	145.7

Authorized FTE: 45.00 Permanent; 7.80 Term

Performance measures:

(a) Outcome:	Percent of cases dismissed on the six-month rule	<.001%
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(b) Output: Number of cases dismissed on the six-month rule <2

(c) Efficiency: Average time from filing of petition to the final disposition, in months 6

(d) Efficiency: Average attorney caseload 209

(e) Output: Number of cases prosecuted 3,555

(f) Output: Number of cases referred for screening 3,900

(12) Eleventh judicial district-Gallup office:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within McKinley county.

Appropriations:

(a)	Personal services and employee benefits	1,294.4	88.1	97.3	1,479.8
(b)	Contractual services	7.1			7.1
(c)	Other	117.7		117.7	

Authorized FTE: 27.00 Permanent; 3.00 Term

Performance measures:

(a) Outcome: Percent of cases dismissed on the six-month rule <5%

(b) Output: Number of cases dismissed on the six-month rule <299

(c) Efficiency: Average time from filing of petition to the final disposition, in months 2.5

(d) Efficiency: Average attorney caseload 166

(e) Output: Number of cases prosecuted 5,977

(f) Output: Number of cases referred for screening 6,261

(13) Twelfth judicial district:

The purpose of the prosecution program is to provide the district with aggressive prosecution of violations of New Mexico statutes by specializing units of prosecution to become proficient and knowledgeable in these specialized areas, to provide programs and assistance to victims of crime pursuant to the New Mexico constitution and to provide collateral support service to improve and ensure the protection, safety and welfare of the citizens of Lincoln and Otero counties.

Appropriations:

(a)	Personal services and			
	employee benefits	1,755.2	358.8	2,114.0
(b)	Contractual services	5.9	3.9	9.8
(c)	Other	179.0	5.1	184.1

Authorized FTE: 34.50 Permanent; 8.50 Term

Performance measures:

(a) Outcome:	Percent of cases dismissed on the six-month rule	<.05%
(b) Output:	Number of cases dismissed on the six-month rule	<3
(c) Efficiency:	Average time from filing of petition to the final disposition, in months	9
(d) Efficiency:	Average attorney caseload	300
(e) Output:	Number of cases prosecuted	6,000
(f) Output:	Number of cases referred for screening	5,000

(14) Thirteenth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the thirteenth judicial district attorney to enforce, improve and ensure the protection, safety, welfare and health of the citizens in Cibola, Sandoval and Valencia counties.

Appropriations:

(a)	Personal services and			
	employee benefits	2,317.8	141.4	2,459.2
(b)	Contractual services	29.5		29.5
(c)	Other	214.3	214.3	

Authorized FTE: 49.00 Permanent; 4.00 Term

Performance measures:

(a) Outcome:	Percent of cases dismissed on the six-month rule	<.02%
(b) Output:	Number of cases dismissed on the six-month rule	<2
(c) Efficiency:	Average time from filing of petition to the final disposition, in months	12

(d) Efficiency:	Average attorney caseload	231
(e) Output:	Number of cases prosecuted	4,875
(f) Output:	Number of cases referred for screening	5,807
Subtotal		43,954.8

ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS:

(1) Administrative support:

The purpose of the administrative support program is to provide fiscal, human resource, staff development, automation, victim program services and support to all district attorneys' offices in New Mexico and to members of the New Mexico children's safehouse network so that they may obtain and access the necessary resources in order to effectively and efficiently carry out their prosecutorial, investigative and programmatic functions.

Appropriations:

(a)	Personal services and		
	employee benefits	517.3	517.3
(b)	Contractual services	9.5	9.5
(c)	Other	375.5 270.0	645.5

Authorized FTE: 9.00 Permanent

Performance measures:

(a) Outcome:	Average employee turnover rates by district (weighted)	15%
(b) Output:	Number of district attorney employees receiving training	700
(c) Efficiency:	Average response time between placement of work orders and resolution of information technology issues for different types of service responses, in days	3

Subtotal 1,172.3

TOTAL JUDICIAL 133,300.8 12,494.2 5,896.0 5,205.3 156,896.3

C. GENERAL CONTROL

ATTORNEY GENERAL:

(1) Legal services:

The purpose of the legal services program is to deliver quality opinions, counsel, representation and other legal services to state government entities and to enforce state law on behalf of the public so that New Mexicans have an open, honest, efficient government and enjoy the protection of state law.

Appropriations:

(a)	Personal services and			
	employee benefits	9,388.6	47.8	9,436.4
(b)	Contractual services	362.5		362.5
(c)	Other	364.6	1,200.0	1,564.6
(d)	Other financing uses	2.6		2.6

Authorized FTE: 141.00 Permanent; 1.00 Temporary

The internal services funds/interagency transfers appropriations to the legal services program of the attorney general in the personal services and employee benefits category include forty-seven thousand eight hundred dollars (\$47,800) from the medicaid fraud division.

All revenue generated from antitrust cases and consumer protection settlements through the attorney general on behalf of the state, political subdivisions or private citizens shall revert to the general fund.

The other state funds appropriation to the legal services program of the attorney general in the other category includes one million two hundred thousand dollars (\$1,200,000) from settlement funds.

(2) Medicaid fraud:

The purpose of the medicaid fraud program is to investigate and prosecute medicaid provider fraud, recipient abuse and neglect in the medicaid program.

Appropriations:

(a)	Personal services and			
	employee benefits	234.7	675.1	909.8
(b)	Contractual services	5.7	16.3	22.0
(c)	Other		33.5	33.5
(d)	Other financing uses	39.8	114.6	154.4

Authorized FTE: 13.00 Permanent

Performance measures:

- (a) Outcome: Three-year savings resulting from fraud investigations, in millions \$2
- (b) Output: Number of program improvement recommendations 4
- (c) Efficiency: Percent of case investigations completed within one hundred twenty days of receipt 75%

(d) Explanatory: Total Medicaid recoveries

\$800,000

(3) Guardianship services:

The purpose of the guardianship services program is to provide court-appointed guardianship, conservatorship and other surrogate decision-making services to incapacitated income- and resource-eligible adults through contracts with private, community-based entities statewide.

Appropriations:

(a)	Personal services and		
	employee benefits	74.4	74.4
(b)	Contractual services	1,852.7	1,852.7

Authorized FTE: 1.00 Permanent

Performance measures:

(a) Output:	Average cost per client	\$2,675
Subtotal		14,412.9

STATE AUDITOR:

The purpose of the state auditor program is to audit the financial affairs of every agency annually so they can improve accountability and performance and to assure New Mexico citizens that funds are expended properly.

Appropriations:

(a)	Personal services and				
	employee benefits	1,801.4	302.6	2,104.0	
(b)	Contractual services	110.1		110.1	
(c)	Other	248.6	114.6	47.1	410.3

Authorized FTE: 30.00 Permanent; 1.00 Term

Performance measures:

(a) Outcome:	Percent of audits completed by regulatory due date	70%
(b) Output:	Total audit fees generated	\$450,000
Subtotal		2,624.4

TAXATION AND REVENUE DEPARTMENT:

(1) Tax administration:

The purpose of the tax administration program is to provide registration and licensure requirements for tax programs and to ensure the administration, collection and compliance of state taxes and fees that provide funding for support services for the general public through appropriations.

Appropriations:

(a)	Personal services and				
	employee benefits	16,262.8	278.0	890.7	17,431.5
(b)	Contractual services	303.4		303.4	
(c)	Other	4,722.3	387.7	176.6	5,286.6

Authorized FTE: 400.00 Permanent; 17.00 Term; 31.70 Temporary

Performance measures:

- (a) Outcome: Amount of dollars assessed as a result of audits, in millions \$40
- (b) Outcome: Percent of audit assessments collected compared to the uncollected balance 20%
- (c) Efficiency: Average cost per audit \$3,425
- (d) Efficiency: Average percent of auditor positions filled compared to approved full-time equivalents 95%
- (e) Output: Number of federal oil and gas audits conducted 32
- (f) Output: Number of field audits conducted for corporate income tax and combined reporting system taxes 375
- (g) Output: Number of international fuel tax agreement/international rate program audits conducted 250
- (h) Output: Number of electronically-filed tax returns processed 275,000

(2) Motor vehicle:

The purpose of the motor vehicle program is to register, title and license vehicles, boats and motor vehicle dealers and to enforce operator compliance with the motor vehicle code and federal regulations by conducting tests, investigations and audits.

Appropriations:

(a)	Personal services and			
	employee benefits	9,564.3	626.4	10,190.7
(b)	Contractual services	265.6	2,100.0	2,365.6
(c)	Other	1,409.0	1,893.6	3,302.6

Authorized FTE: 273.00 Permanent; 4.00 Term; 4.00 Temporary

Notwithstanding the provision of Subsection C of Section 66-5-44C NMSA 1978, the other state funds appropriation to the motor vehicle program of the taxation and revenue department includes four hundred thousand dollars (\$400,000) of enhanced driver's license fees for the payment of field office leases.

Performance measures:

(a) Outcome:	Percent of registered vehicles having liability insurance	80%
(b) Efficiency:	Average wait time in high-volume field offices, in minutes	15
(c) Efficiency:	Average number of days to post a DWI citation to drivers' records upon receipt	15
(d) Output:	Number of driver transactions completed through mail or electronically	41,525
(e) Output:	Number of eight-year drivers' licenses issued	50,000

(3) Property tax:

The purpose of the property tax program is to administer the Property Tax Code, to ensure the fair appraisal of property and to assess property taxes within the state.

Appropriations:

(a)	Personal services and			
	employee benefits	874.7	1,128.3	2,003.0
(b)	Contractual services	38.4	127.8	166.2
(c)	Other	132.8	551.1	683.9

Authorized FTE: 44.00 Permanent

Performance measures:

(a) Outcome:	Percent of resolved accounts resulting from delinquent property tax sales	70%
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(b) Outcome: Number of counties achieving an eighty-five percent minimum

ratio of assessed value to sales price 29

(c) Output: Number of appraisals or valuations for corporations

conducting business within the state 450

(4) Program support:

The purpose of program support is to provide information system resources, human resource services, finance and accounting services, revenue forecasting and legal services in order to give agency personnel the resources needed to meet departmental objectives. For the general public, the program conducts hearings for resolving taxpayer protests and provides stakeholders with reliable information regarding the state's tax programs.

Appropriations:

(a) Personal services and

employee benefits 11,534.7 178.1 316.1 12,028.9

(b) Contractual services 1,119.0 186.2 1,305.2

(c) Other 6,055.0 169.2 6,224.2

(d) Other financing uses 18.2 18.2

Authorized FTE: 210.00 Permanent; 4.00 Term

Performance measures:

(a) Outcome: Number of tax protest cases resolved 728

(b) Outcome: Number of DWI drivers' license revocations rescinded due to

failure to hold hearing within ninety-day deadline 200

(c) Output: Number of electronically-filed tax returns processed

through the oil and gas administration and revenue

database, by data lines 1,135

Subtotal 61,310.0

STATE INVESTMENT COUNCIL:

(1) State investment:

The purpose of the state investment program is to maximize distributions to the permanent funds' beneficiaries while preserving the real value of the funds for future generations.

Appropriations:

(a)	Personal services and		
	employee benefits	1,776.6	1,776.6
(b)	Contractual services	23,414.5	23,414.5
(c)	Other	501.3	501.3

Authorized FTE: 26.00 Permanent

The other state funds appropriation to the state investment council in the contractual services category includes one million nine hundred twenty-one thousand two hundred dollars (\$1,921,200) for payment of custody services associated with the fiscal agent contract to the state board of finance upon monthly assessments.

The other state funds appropriation to the state investment council in the contractual services category includes twenty-one million twenty thousand eight hundred dollars (\$21,020,800) to be used only for money manager fees.

Performance measures:

- (a) Outcome: Five-year annualized percentile performance ranking in investment consultants cooperative endowment fund universe >49th
- (b) Efficiency: Five-year annualized investment returns to exceed internal benchmark in basis points >25

Subtotal 25,692.4

DEPARTMENT OF FINANCE AND ADMINISTRATION:

(1) Policy development, fiscal analysis and budget oversight:

The purpose of the policy development, fiscal analysis and budget oversight program is to provide professional, coordinated policy development and analysis and oversight to the governor, the legislature and state agencies so they can advance the state's policies and initiatives using appropriate and accurate data to make informed decisions for the prudent use of the public's tax dollars.

Appropriations:

(a)	Personal services and		
	employee benefits	2,388.8	2,388.8
(b)	Contractual services	111.5	111.5
(c)	Other	152.1	152.1
(d)	Other financing uses	3.0	3.0

Authorized FTE: 31.80 Permanent

Performance measures:

(a) Outcome: Error rate for eighteen-month general fund revenue forecast 3%

(b) Outcome: Average number of days to approve or disapprove budget

adjustment requests 5

(2) Community development, local government assistance and fiscal oversight:

The purpose of the community development, local government assistance and fiscal oversight program is to provide federal and state oversight assistance to counties, municipalities and special districts with planning, implementation, development and fiscal management so that entities can maintain strong, viable, lasting communities.

Appropriations:

(a) Personal services and

employee benefits	1,471.8	430.3	427.4	2,329.5
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(b) Contractual services	16.5	79.5	94.0	190.0
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(c) Other	67.1	95.2	88.6	250.9
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Authorized FTE: 26.00 Permanent; 16.00 Term

Performance measures:

(a) Output: Percent of community development block grant closeout

letters issued within forty-five days of review of final

report 65%

(b) Output: Percent of capital outlay projects closed within the

original reversion date 60%

(3) Fiscal management and oversight:

The purpose of the fiscal management and oversight program is to provide for and promote financial accountability for public funds throughout state government and to provide state government agencies and the citizens of New Mexico with timely, factual and comprehensive information on the financial status and expenditures of the state.

Appropriations:

(a) Personal services and

employee benefits	2,684.9			2,684.9
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(b) Contractual services	381.1			381.1
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(c) Other	1,244.5		1,244.5	
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Authorized FTE: 51.00 Permanent

Performance measures:

- (a) Quality: Percent of time the central accounting system is operational 97%
- (b) Output: Percent of time the central payroll system is operational 100%

(4) Program support:

The purpose of program support is to provide other department of finance and administration programs with central direction to agency management processes to ensure consistency, legal compliance and financial integrity; to administer the executive's exempt salary plan; and to review and approve professional services contracts.

Appropriations:

- | | | | |
|-----|--|---------|---------|
| (a) | Personal services and
employee benefits | 1,095.4 | 1,095.4 |
| (b) | Contractual services | 59.4 | 59.4 |
| (c) | Other | 86.5 | 86.5 |

Authorized FTE: 19.00 Permanent

Performance measures:

- (a) Output: Percent of department fund accounts reconciled within two
months following the closing of each month 100%

(5) Dues and membership fees/special appropriations:

Appropriations:

- | | | | |
|-----|---|-------|-------|
| (a) | Council of state governments | 81.1 | 81.1 |
| (b) | Western interstate commission
for higher education | 108.0 | 108.0 |
| (c) | Education commission of the
states | 53.8 | 53.8 |
| (d) | Rocky mountain corporation
for public broadcasting | 13.1 | 13.1 |
| (e) | National association of
state budget officers | 9.9 | 9.9 |
| (f) | National conference of state | | |

	legislatures	97.9		97.9
(g)	Western governors'			
	association	36.0		36.0
(h)	Cumbres and Toltec scenic			
	railroad commission	10.0		10.0
(i)	Governmental accounting			
	standards board	20.7		20.7
(j)	National center for state			
	courts	79.3	79.3	
(k)	National conference of			
	insurance legislators	10.0		10.0
(l)	National governors'			
	association	63.5		63.5
(m)	Citizens review board	310.0	108.0	418.0
(n)	Emergency water fund	100.0		100.0
(o)	Fiscal agent contract	960.0		960.0
(p)	New Mexico water resources			
	association	6.6		6.6
(q)	Enhanced emergency 911 fund		2,900.0	2,900.0
(r)	Emergency 911 income		4,100.0	4,100.0
(s)	Emergency 911 reserve		520.0	520.0
(t)	Community development			
	programs		20,000.0	20,000.0
(u)	New Mexico community			
	assistance program		56.0	56.0
(v)	Emergency 911 database			
	network surcharge	140.0	5,560.0	5,700.0

(w)	State planning districts	374.2		374.2
(x)	Emergency 911 principal			
	and interest	35.0	734.3	769.3
(y)	Mentoring program	893.3		893.3
(z)	Wireless enhanced 911 fund		585.0	2,490.0
				3,075.0
(aa)	Civil legal services fund		705.0	1,295.0
				2,000.0
(bb)	DWI grants	2,000.0	14,400.0	16,400.0
(cc)	Leasehold community			
	assistance	141.0		141.0
(dd)	Acequia and community ditch			
	program	30.0		30.0
(ee)	Food banks	400.0		400.0

Upon certification by the state board of finance pursuant to Section 6-1-2 NMSA 1978 that a critical emergency exists that cannot be addressed by disaster declaration or other emergency or contingency funds ~~[and upon review by the legislative finance committee]~~, the secretary of the department of finance and administration is authorized to transfer from the general fund operating reserve to the state board of finance emergency fund the amount necessary to meet the emergency. Such transfers shall not exceed an aggregate amount of five hundred thousand dollars (\$500,000) in fiscal year 2004. Repayments of emergency loans made pursuant to this paragraph shall be deposited in the board of finance emergency fund pursuant to the provisions of Section 6-1-5 NMSA 1978, provided that, after the total amounts deposited in fiscal year 2004 exceed two hundred fifty thousand dollars (\$250,000), then any additional repayments shall be transferred to the general fund.

Subtotal 70,404.3

PUBLIC SCHOOL INSURANCE AUTHORITY:

(1) Benefits:

The purpose of the benefits program is to provide an effective health insurance package to educational employees and their eligible family members so they can be protected against catastrophic financial losses due to medical problems, disability or death.

Appropriations:

(a)	Contractual services		191,719.2	191,719.2
(b)	Other financing uses		498.3	498.3

Performance measures:

(a) Outcome: Percent of participants receiving recommended preventive

care 65%

(b) Efficiency: Percent variance of medical premium change between the public school insurance authority and industry average $\leq 3\%$

(c) Efficiency: Percent variance of dental premium change between the public school insurance authority and industry average $\leq 3\%$

(d) Quality: Percent of employees expressing satisfaction with group health benefits 77%

(2) Risk:

The purpose of the risk program is to provide economical and comprehensive property, liability and workers' compensation programs to educational entities so they are protected against injury and loss.

Appropriations:

(a)	Contractual services	31,569.3	31,569.3
(b)	Other financing uses	498.3	498.3

Performance measures:

(a) Outcome: Percent variance of public property premium change between public school insurance authority and industry average $\leq 8\%$

(b) Outcome: Percent variance of workers' compensation premium change between public school insurance authority and industry average $\leq 8\%$

(c) Outcome: Percent variance of public liability premium change between public school insurance authority and industry average $\leq 8\%$

(3) Program support:

The purpose of program support is to provide administrative support for the benefit and risk programs and to assist the agency in delivering services to its constituents.

Appropriations:

(a)	Personal services and employee benefits	624.6	624.6
(b)	Contractual services	170.7	170.7

(c)	Other	201.3	201.3
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Authorized FTE: 10.00 Permanent

Subtotal	225,281.7
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RETIREE HEALTH CARE AUTHORITY:

(1) Healthcare benefits administration:

The purpose of the healthcare benefits administration program is to provide core group and optional healthcare benefits and life insurance to current and future eligible retirees and their dependents so they may access covered and available core group and optional healthcare benefits and life insurance benefits when they need them. The purpose of the senior prescription drug program is to administer the senior prescription drug program aimed at reducing prescription drug expenditures for those covered participants.

Appropriations:

(a)	Contractual services	129,000.0	129,000.0
(b)	Other 10.0	10.0	
(c)	Other financing uses	2,977.2	2,977.2

Performance measures:

(a) Output:	Number of years of long-term actuarial solvency	15
(b) Output:	Total revenue generated, in millions	\$123.6
(c) Efficiency:	Total revenue credited to the reserve fund, in millions	\$30.9
(d) Efficiency:	Total healthcare benefits program claims paid, in millions	\$113.5
(e) Efficiency:	Average monthly per participant claim cost, nonmedicare eligible	\$421
(f) Output:	Average monthly per participant claim cost, medicare eligible	\$235
(g) Efficiency:	Percent of medical plan premium subsidy	44%
(h) Output:	Number of senior prescription drug program participants	5,500

(2) Program support:

The purpose of program support is to provide administrative support for the healthcare benefits administration program to assist the agency in delivering services to its constituents.

Appropriations:

(a)	Personal services and
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	employee benefits		950.1	950.1
(b)	Contractual services		800.0	800.0
(c)	Other	777.6	777.6	

Authorized FTE: 18.00 Permanent

Any unexpended or unencumbered balance in the administrative division of the retiree health care authority remaining at the end of fiscal year 2004 shall revert to the benefits division.

Subtotal 134,514.9

GENERAL SERVICES DEPARTMENT:

(1) Employee group health benefits:

The purpose of the employee group health benefits program is to effectively administer comprehensive health-benefit plans to state employees.

Appropriations:

(a)	Contractual services		12,000.0	12,000.0
(b)	Other	138,051.8	138,051.8	
(c)	Other financing uses		840.6	840.6

Performance measures:

(a) Quality: Percent of employees expressing satisfaction with the group

health benefits 80%

(b) Efficiency: Percent change in medical premium compared to the industry

average \leq 3%

(c) Efficiency: Percent change in dental premium compared to the industry

average \leq 3%

(2) Risk management:

The purpose of the risk management program is to protect the state's assets against property, public liability and workers' compensation, state unemployment compensation, local public bodies unemployment compensation, and surety bond losses so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and			
	employee benefits		2,795.6	2,795.6

(b)	Contractual services		515.0	515.0
(c)	Other	695.9	695.9	
(d)	Other financing uses		405.9	405.9

(3) Risk management funds:

Appropriations:

(a)	Public liability		39,030.7	39,030.7
(b)	Surety bond		136.4	136.4
(c)	Public property reserve		7,621.9	7,621.9
(d)	Local public bodies			
	unemployment compensation		781.4	781.4
(e)	Workers' compensation			
	retention		12,661.8	12,661.8
(f)	State unemployment			
	compensation		3,846.4	3,846.4

Authorized FTE: 51.00 Permanent

Performance measures:

- (a) Outcome: Percent decrease of state government workers' compensation claims 6%
- (b) Quality: Percent of public property clients rating the risk management program's claims processing services as satisfactory or better 85%
- (c) Output: Percent of workers' compensation claims generated electronically 90%
- (d) Efficiency: Percent of workers' compensation warrants cancelled as a total of all warrants issued $\leq 5\%$

(4) Information technology:

The purpose of the information technology program is to provide quality information processing and communication services that are both timely and cost-effective so that agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and		
	employee benefits	14,029.5	14,029.5
(b)	Contractual services	10,106.2	10,106.2
(c)	Other	24,998.7	24,998.7
(d)	Other financing uses	1,743.0	1,743.0

Authorized FTE: 231.00 Permanent

Performance measures:

- (a) Outcome: Compliance with federal cost reimbursement rules 100%
- (b) Efficiency: Percent of individual information processing services that break even, including sixty days of operating reserve 70%
- (c) Efficiency: Percent of individual communication services that break even, including sixty days of operating reserve 70%
- (d) Efficiency: Percent of individual printing services that break even, including sixty days of operating reserve 70%
- (e) Quality: Customer satisfaction with information processing services 75%
- (f) Quality: Customer satisfaction with client services 75%
- (g) Quality: Customer satisfaction with data network services 85%
- (h) Quality: Customer satisfaction with human resources system services 85%
- (i) Quality: Customer satisfaction with printing and graphics services 85%
- (j) Quality: Customer satisfaction with telephone communication services 85%
- (k) Quality: Customer satisfaction with radio communications services 85%
- (l) Outcome: Completion of a plan, developed by the general services department and the chief information officer, to identify and implement a cost-effective appropriate role for the

(5) Business office space management and maintenance services:

The purpose of the business office space management and maintenance services program is to provide employees and the public with effective property management and maintenance so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and			
	employee benefits	4,764.3	15.6	4,779.9
(b)	Contractual services	.3		.3
(c)	Other	3,690.6	227.3	3,917.9
(d)	Other financing uses	280.9		280.9

Authorized FTE: 140.00 Permanent

Performance measures:

- (a) Quality: Percent of customers satisfied with custodial and maintenance services, as measured by an annual survey 90%
- (b) Outcome: Number of days to process lease requests 200
- (c) Output: Number of scheduled preventive maintenance tasks 5,400
- (d) Efficiency: Operating costs per square foot in Santa Fe for state-owned buildings \$5.14
- (e) Efficiency: Percent increase in average cost per square foot cost of both leased and owned office space in Santa Fe 0%
- (f) Efficiency: Percent of contractor pay requests approved within seven working days 95%
- (g) Quality: Percent of customers satisfied with property control services 80%
- (h) Efficiency: Percent of property control capital projects on schedule within approved budget 90%

(6) Transportation services:

The purpose of the transportation services program is to provide centralized and effective administration of the state's motor pool and aircraft transportation services so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and			
	employee benefits	142.9	1,419.8	1,562.7
(b)	Contractual services	1.9	106.9	108.8
(c)	Other	291.1	7,923.2	8,214.3
(d)	Other financing uses	17.0	2,464.6	2,481.6

Authorized FTE: 34.00 Permanent

Performance measures:

- (a) Quality: Percent of customers satisfied with lease services 90%
- (b) Efficiency: Percent of vehicle lease revenue to expenditures 100%
- (c) Efficiency: Percent of aircraft revenues to expenditures 100%
- (d) Explanatory: Percent of short-term vehicle utilization
80%
- (e) Efficiency: Comparison of lease rates to other public vehicle fleet
rates $\leq 3\%$
- (f) Efficiency: Percent of individual vehicle lease services that
break even, including sixty days of operating reserve 70%
- (g) Efficiency: Percent of individual aircraft services that break even,
including sixty days of operating reserve 70%

(7) Procurement services:

The purpose of the procurement services program is to process the procurement of tangible property for government entities to ensure compliance with the Procurement Code so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and			
	employee benefits	1,032.5	243.0	1,443.8

(b)	Contractual services			50.0		50.0
(c)	Other	166.5	79.8	59.8	306.1	
(d)	Other financing uses	63.1	91.2		.1	154.4

Authorized FTE: 25.00 Permanent; 6.00 Term

Performance measures:

- (a) Efficiency: Average cycle-completion times for construction projects,
in days 80
- (b) Efficiency: Average cycle-completion times for small purchases, in days 15
- (c) Efficiency: Average cycle-completion times for tangible products and
services, in days 45
- (d) Efficiency: Average cycle-completion times for information technology
projects, in days 80
- (e) Quality: Percent of customers satisfied with procurement services 85%
- (f) Output: Percent increase in small business clients 10%
- (8) Program support:

The purpose of program support is to manage the program performance process to demonstrate success.

Appropriations:

(a)	Personal services and employee benefits			2,578.9		2,578.9
(b)	Contractual services			123.0		123.0
(c)	Other	590.7		590.7		
(d)	Other financing uses			152.1		152.1

Authorized FTE: 45.00 Permanent

Performance measures:

- (a) Efficiency: Percent of employee files that contain current performance
appraisal development plans that were completed by the
department's established focal point period 99%

(b) Outcome: Percent of reclassification entries and audit adjustments

made by outside auditors <=5%

Subtotal 297,006.2

EDUCATIONAL RETIREMENT BOARD:

(1) Educational retirement:

The purpose of the educational retirement program is to provide secure retirement benefits to active and retired members so they can have a secure monthly benefit when they retire from public education.

Appropriations:

(a)	Personal services and		
	employee benefits	2,493.2	2,493.2
(b)	Contractual services	12,089.9	12,089.9
(c)	Other	725.6	725.6

Authorized FTE: 48.00 Permanent

The other state funds appropriation to the educational retirement board in the contractual services category includes ten million four hundred fifty-eight thousand dollars (\$10,458,000) to be used only for investment manager fees.

The other state funds appropriation to the educational retirement board in the contractual services category includes six hundred twenty-seven thousand dollars (\$627,000) for payment of custody services associated with the fiscal agent contract to the state board of finance upon monthly assessments.

Performance measures:

(a) Outcome: Funding period of unfunded actuarial accrued liability, in
years <30

Subtotal 15,308.7

CRIMINAL AND JUVENILE JUSTICE COORDINATING COUNCIL:

The purpose of the criminal and juvenile justice coordinating council program is to provide information, analysis, recommendations and assistance from a coordinated cross-agency perspective to the three branches of government and interested citizens so they have the resources needed to make policy decisions that benefit the criminal and juvenile justice systems.

Appropriations:

(a)	Contractual services	256.8	256.8
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Subtotal 256.8

PUBLIC DEFENDER DEPARTMENT:

(1) Criminal legal services:

The purpose of the criminal legal services program is to provide effective legal representation and advocacy for eligible clients so that their liberty and constitutional rights are protected and to serve the community as a partner in assuring a fair and efficient criminal justice system that also sustains New Mexico's statutory and constitutional mandate to adequately fund a statewide indigent defense system.

Appropriations:

(a)	Personal services and			
	employee benefits	16,092.7		16,092.7
(b)	Contractual services	7,674.1	1,100.0	8,774.1
(c)	Other	4,490.5	100.0	4,590.5

Authorized FTE: 317.00 Permanent

Any unexpended or unencumbered balance in the public defender department remaining at the end of fiscal year 2004 from appropriations made from the general fund shall not revert.

Performance measures:

- (a) Output: Number of expert witness services approved by the department 3,100
- (b) Output: Average number of contacts with felony clients, on a monthly basis, by designated team members 4,600
- (c) Output: Number of alternative sentencing treatment placements for felony and juvenile clients 3,100
- (d) Explanatory: Number of final appellate court holdings that found department attorneys provided ineffective assistance of counsel in felony cases 0

Subtotal 29,457.3

GOVERNOR:

(1) Executive management and leadership:

The purpose of the executive management and leadership program is to provide appropriate leadership to the citizens of the state and, more specifically, to the executive branch of government to allow for more efficient and effective operation of executive agencies.

Appropriations:

- (a) Personal services and

	employee benefits	2,929.1	2,929.1
(b)	Contractual services	91.0	91.0
(c)	Other	541.3	541.3

Authorized FTE: 46.30 Permanent

Performance measures:

- (a) Outcome: General fund reserve level as a percent of recurring appropriations in the executive budget recommendation 5%
- (b) Output: Number of days to appoint individuals to board and commission positions 30

Subtotal 3,561.4

LIEUTENANT GOVERNOR:

(1) State ombudsman:

The purpose of the state ombudsman program is to facilitate and promote cooperation and understanding between the citizens of New Mexico and the agencies of state government, refer any complaints or special problems citizens may have to the proper entity and keep records of activities and make an annual report to the governor.

Appropriations:

(a)	Personal services and		
	employee benefits	485.4	485.4
(b)	Contractual services	4.2	4.2
(c)	Other	60.7	60.7

Authorized FTE: 6.00 Permanent

The general fund appropriation to the state ombudsman program of the lieutenant governor in the personal services and employee benefits category includes twenty thousand dollars (\$20,000) for compensation for the acting governor's compensation fund.

Subtotal 550.3

INFORMATION TECHNOLOGY MANAGEMENT OFFICE:

(1) Information technology management:

The purpose of the information technology management program is to provide information technology strategic planning, oversight and consulting services to New Mexico government agencies so they can provide improved services to New Mexico citizens.

Appropriations:

(a)	Personal services and employee benefits	748.5	748.5
(b)	Contractual services	20.4	20.4
(c)	Other	84.2	84.2
(d)	Other financing uses	.2	.2

Authorized FTE: 9.00 Permanent

Performance measures:

- (a) Outcome: Percent of information technology projects audited or reviewed by staff 65%
- (b) Outcome: Percent of state agencies in compliance with state information technology strategic plan 35%

Subtotal 853.3

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION:

(1) Pension administration:

The purpose of the pension administration program is to provide information, retirement benefits and an actuarially sound fund to association members so they can receive the defined benefit to which they are entitled when they retire from public service.

Appropriations:

(a)	Personal services and employee benefits	4,134.6	4,134.6
(b)	Contractual services	19,238.4	19,238.4
(c)	Other	1,977.9	1,977.9
(d)	Other financing uses		.0

Authorized FTE: 83.00 Permanent

The other state funds appropriation to the public employees retirement association in the contractual services category includes seventeen million one hundred thirty-five thousand dollars (\$17,135,000) to be used only for investment manager fees.

The other state funds appropriation to the public employees retirement association in the contractual services category includes one million three hundred forty-six thousand dollars (\$1,346,000) for payment of custody services associated with the fiscal agent contract to the state board of finance upon monthly assessments.

Performance measures:

(a) Explanatory: Number of years needed to finance the unfunded actuarial

accrued liability for the public employees retirement fund

with current statutory contribution rates >/=30

(b) Efficiency: Five-year average annualized investment returns to exceed

internal benchmark, in basis points >50 bp

(c) Efficiency: Five-year annualized performance ranking in national

association of state investment officers survey >49th

Subtotal 25,350.9

STATE COMMISSION OF PUBLIC RECORDS:

(1) Records, information and archival management:

The purpose of the records, information and archival management program is to develop, implement and provide tools, methodologies and services for the benefit of government agencies, historical repositories and the public; and to effectively create, preserve, protect and properly dispose of records, facilitate their use and understanding and protect the interests of the citizens of New Mexico.

Appropriations:

(a) Personal services and

employee benefits	1,650.0	39.4	9.0	1,698.4
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(b) Contractual services

35.1	3.0	38.1
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(c) Other 296.2

138.9	435.1
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Authorized FTE: 34.50 Permanent; 1.50 Term

Performance measures:

(a) Outcome: Decrease in maximum number of days of lag time between rule

effective date and online availability 45

(b) Outcome: Percent of state agencies with current records retention

and disposition schedules 66%

(c) Outcome: Percent of annual strategic action plan achieved or on

schedule 75%

Subtotal 2,171.6

SECRETARY OF STATE:

The purpose of the secretary of state program is to provide voter education and information on election law and government ethics to citizens, public officials, candidates and commercial and business entities so they can comply with state law.

Appropriations:

(a)	Personal services and		
	employee benefits	1,819.8	1,819.8
(b)	Contractual services	87.6	87.6
(c)	Other	888.2	888.2

Authorized FTE: 37.00 Permanent; 1.00 Temporary

Performance measures:

(a) Output: Number of new registered voters 47,000

Subtotal 2,795.6

PERSONNEL BOARD:

(1) Human resource management:

The purpose of the human resource management program is to provide a flexible system of merit-based opportunity, appropriate compensation, human resource accountability and employee development that meets the evolving needs of agencies, employees, job applicants and the public, so economy and efficiency in the management of state affairs may be provided, at the same time the interest of the public are protected.

Appropriations:

(a)	Personal services and		
	employee benefits	3,242.7	3,242.7
(b)	Contractual services	51.7 40.0	91.7
(c)	Other	397.3 44.0	441.3

Authorized FTE: 67.00 Permanent

Any unexpended or unencumbered balance in the state employees career development conference fund at the end of fiscal year 2004 shall not revert to the general fund.

Performance measures:

- (a) Outcome: Average employee pay as a percent of board-approved comparator market, based on legislative authorization 95%
- (b) Outcome: Percent of managers and supervisors completing board-required training as a percent of total manager and supervisor category employees 90%
- (c) Output: Percent of agency-specific correctable human resource audit exceptions corrected within six months of discovery 50%
- (d) Output: Number of days to produce employment lists <15
- (e) Quality: Percent of hiring officials satisfied with state personnel office's employment list 90%
- (f) Quality: Percent of classified service FTE represented in agencies having a quality assurance review (audit) conducted by the state personnel office in accordance with the quality assurance program 70%
- (g) Outcome: Percent of trained managers and supervisors who report they have changed their behavior or used the skill or knowledge on the job after completing board-required training (within six months) 70%

Subtotal 3,775.7

STATE TREASURER:

The purpose of the state treasurer is to provide a financial environment that maintains maximum accountability for receipt, investment and disbursement of public funds to protect the financial interests of New Mexico citizens.

Appropriations:

- | | | | | |
|-----|-----------------------|---------|-------|---------|
| (a) | Personal services and | | | |
| | employee benefits | 2,441.0 | 35.5 | 2,476.5 |
| (b) | Contractual services | 178.3 | | 178.3 |
| (c) | Other | 564.2 | 564.2 | |

Authorized FTE: 41.50 Permanent

The general fund appropriation to the state treasurer in the other category includes one hundred sixty-seven thousand dollars (\$167,000) to be used only for building leases.

Performance measures:

- (a) Output: Percent of cash to book reconciliation items processed and adjusted to the agency fund balance within thirty days of closing department of finance and administration accounting system 95%

Subtotal 3,219.0

TOTAL GENERAL CONTROL	135,939.2	216,803.8	543,014.9	22,789.5
918,547.4				

D. COMMERCE AND INDUSTRY

BOARD OF EXAMINERS FOR ARCHITECTS:

- (1) Architectural registration:

The purpose of the architectural registration program is to provide architectural registration to approved applicants so they can practice architecture.

Appropriations:

- | | | | |
|-----|---|-------|-------|
| (a) | Personal services and employee benefits | 210.1 | 210.1 |
| (b) | Contractual services | 14.5 | 14.5 |
| (c) | Other | 89.0 | 89.0 |

Authorized FTE: 4.00 Permanent

Subtotal 313.6

BORDER AUTHORITY:

- (1) Border development:

The purpose of the border development program is to provide leadership in the development of the state's international ports of entry as well as to serve as the governor's advisor and point of contact for those interested in opportunities at the ports. Border development helps to facilitate new infrastructure, trade opportunities, expanded job opportunities, jobs-training capabilities and all other activities that could contribute to a productive cross-border trade-driven economy within the New Mexico border region.

Appropriations:

(a)	Personal services and			
	employee benefits	143.7	58.0	201.7
(b)	Contractual services	12.0		12.0
(c)	Other	45.1		45.1

Authorized FTE: 4.00 Permanent

Performance measures:

(a) Outcome:	Commercial and noncommercial vehicular port traffic at New	
	Mexico ports	688,938

Subtotal 258.8

TOURISM DEPARTMENT:

(1) Marketing:

The purpose of the marketing program is to create and maintain an "image" or "brand" for the state of New Mexico and influence in-state, domestic and international markets to directly affect the positive growth and development of New Mexico as a top tourism destination so that New Mexico may increase its tourism market share.

Appropriations:

(a)	Personal services and			
	employee benefits	1,072.4		1,072.4
(b)	Contractual services	156.2		156.2
(c)	Other	3,817.7		3,817.7

Authorized FTE: 33.50 Permanent

Performance measures:

(a) Outcome:	New Mexico's domestic tourism market share	1.04%
(b) Outcome:	Print advertising conversion rate	39%
(c) Outcome:	Broadcast conversion rate	28%

(2) Promotion:

The purpose of the promotion program is to produce and provide collateral, editorial and special events for the consumer and trader so that they may increase their awareness of New Mexico as a premier tourist destination.

Appropriations:

(a)	Personal services and		
	employee benefits	222.7	222.7
(b)	Other	217.2	217.2

Authorized FTE: 4.00 Permanent

Performance measures:

(a) Outcome: Percent of inquiries planning to visit within the next
twelve months 63%

(b) Output: Number of familiarization tours 22

(3) Outreach:

The purpose of the outreach program is to provide constituent services for communities, regions and other entities so that they may identify their needs and assistance can be provided to locate resources to fill those needs, whether internal or external to the organization.

Appropriations:

(a)	Personal services and		
	employee benefits	97.5	97.5
(b)	Contractual services	.7	.7
(c)	Other	1,096.0	1,096.0

Authorized FTE: 2.00 Permanent

(4) New Mexico magazine:

The purpose of the New Mexico magazine program is to produce a monthly magazine and ancillary products for a state and global audience so that the audience can learn about New Mexico from a cultural, historical and educational perspective.

Appropriations:

(a)	Personal services and		
	employee benefits	1,037.5	1,037.5
(b)	Contractual services	922.9	922.9
(c)	Other	2,683.0	2,683.0

Authorized FTE: 19.00 Permanent

Performance measures:

(a) Outcome: Circulation rate 122,000

(b) Output: Ancillary product revenue \$365,000

(5) New Mexico clean and beautiful:

The purpose of the New Mexico clean and beautiful program is to accomplish litter control by vesting in the department's authority to eliminate litter from the state to the maximum practical extent; and to provide direct or matching grants with cities, counties, Indian nations, tribes and pueblo governments for the purpose of promoting local keep America beautiful system programs in order to develop a statewide litter and solid waste reduction program.

Appropriations:

(a)	Personal services and		
	employee benefits	106.3	106.3
(b)	Contractual services	150.0	150.0
(c)	Other	599.4	599.4

Authorized FTE: 2.00 Permanent

Performance measures:

(a) Outcome: Pounds of litter removed 5,500,000

(b) Output: Number of keep America beautiful program communities/
volunteers participating in the spring great American
cleanup 20/45,000

(6) Program support:

The purpose of program support is to provide administrative assistance to support the department's programs and personnel so they may be successful in implementing and reaching their strategic initiatives and maintaining full compliance with state rules and regulations.

Appropriations:

(a)	Personal services and		
	employee benefits	703.6	703.6
(b)	Contractual services	202.2	202.2
(c)	Other	840.5	840.5

Authorized FTE: 14.00 Permanent

Subtotal 13,925.8

ECONOMIC DEVELOPMENT DEPARTMENT:

(1) Community development:

The purpose of the community development program is to assist communities in preparing for their role in the new economy, focusing on high-quality job creation and improved infrastructure so New Mexicans can increase their wealth and improve their quality of life.

Appropriations:

(a)	Personal services and		
	employee benefits	957.4	957.4
(b)	Contractual services	265.0	265.0
(c)	Other	528.3	528.3

Authorized FTE: 17.00 Permanent

Performance measures:

(a) Output: Number of existing New Mexico business expansions as a result of the community development program 21

(b) Output: Number of film jobs created 10,000

(2) Job creation and job growth:

The purpose of the job creation and job growth program is to produce new high-paying employment opportunities for New Mexicans so they can increase their wealth and improve their quality of life.

Appropriations:

(a)	Personal services and		
	employee benefits	846.3	846.3
(b)	Contractual services	219.2	219.2
(c)	Other	254.5	2,000.0
			2,254.5

Authorized FTE: 14.00 Permanent

The internal services/interagency transfers appropriation to the job creation and job growth program of the economic development department includes two million dollars (\$2,000,000) from the temporary assistance for needy families block grant to the development training fund.

Performance measures:

(a) Outcome: Number of jobs created in rural New Mexico, of the total jobs created, by the job creation and job growth program 700

(b) Outcome: Number of jobs created, of net new jobs created in New Mexico, as a result of the job creation and job growth program 3,500

(c) Output: Dollar value of New Mexico exports to Mexico as a result of the job creation and job growth program, in millions \$14

(d) Output: Total number of export-related jobs impacted by the activities of the job creation and job growth program 1,156

(3) Technology commercialization:

The purpose of the technology commercialization program is to increase the start-up, relocation and growth of technology-based business in New Mexico to give New Mexico citizens the opportunity for high-paying jobs.

Appropriations:

(a)	Personal services and employee benefits	566.7	566.7
(b)	Contractual services	136.0	136.0
(c)	Other	103.2	103.2

Authorized FTE: 9.00 Permanent

Performance measures:

(a) Outcome: Number of current and previous New Mexico 9000 customers that become ISO 9000 certified 6

(b) Output: Number of high-technology jobs created as a result of the technology commercialization program 75

(4) Program support:

The purpose of program support is to provide central direction to agency management processes and fiscal support to agency programs to ensure consistency, continuity and legal compliance.

Appropriations:

(a)	Personal services and employee benefits	1,486.6	1,486.6
(b)	Contractual services	63.5	63.5

(c) Other 535.8 535.8

Authorized FTE: 25.00 Permanent; 2.00 Term

Performance measures:

(a) Outcome: Number of impressions generated by the "New Mexico next" ad
campaign, in millions 10

Subtotal 7,962.5

REGULATION AND LICENSING DEPARTMENT:

(1) Construction industries and manufactured housing:

The purpose of the construction industries and manufactured housing program is to provide code compliance oversight; issue licenses, permits and citations; perform inspections; administer exams; process complaints; and enforce laws, rules and regulations relating to general construction and manufactured housing standards to industry professionals.

Appropriations:

(a) Personal services and
employee benefits 4,995.2 89.2 5,084.4

(b) Contractual services 60.0 75.0 135.0

(c) Other 1,330.9 58.4 1,389.3

Authorized FTE: 105.80 Permanent

Performance measures:

(a) Outcome: Percent of permitted manufactured housing projects inspected 70%

(b) Output: Percent of consumer complaint cases resolved of the total
number of complaints filed 96%

(2) Financial institutions and securities:

The purpose of the financial institutions and securities program is to issue charters and licenses; perform examinations; investigate complaints; enforce laws, rules and regulations; and promote investor protection and confidence so capital formation is maximized and a secure financial infrastructure is available to support economic development.

Appropriations:

(a) Personal services and
employee benefits 2,021.3 2,021.3

(b)	Contractual services		96.0		96.0
(c)	Other	353.5	20.5		374.0

Authorized FTE: 39.00 Permanent

Performance measures:

(a) Outcome: Percent of statutorily complete applications that are processed within a standard number of days by type of application 90%

(3) Alcohol and gaming:

The purpose of the alcohol and gaming program is to regulate the sale, service and public consumption of alcoholic beverages and the holding, operating and conducting of certain games of chance by licensing qualified people and, in cooperation with the department of public safety, to enforce the Liquor Control Act and the Bingo and Raffle Act to protect the health, safety and welfare of the citizens of and visitors to New Mexico.

Appropriations:

(a)	Personal services and				
	employee benefits	648.3		63.6	711.9
(b)	Contractual services	8.0		31.1	39.1
(c)	Other	166.6	15.0		181.6

Authorized FTE: 14.00 Permanent; 2.00 Term

Performance measures:

(a) Outcome: Number of days to process a license application that requires a hearing 138

(b) Output: Number of days to resolve an administrative citation 53

(4) Program support:

The purpose of program support is to provide leadership and centralized direction, financial management, information systems and human resources support for all agency organizations to ensure licensure and compliance efficiency.

Appropriations:

(a)	Personal services and				
	employee benefits	1,396.2		432.8	1,829.0
(b)	Contractual services	23.0		21.5	44.5

(c) Other 300.9 188.7 489.6

Authorized FTE: 33.20 Permanent

Performance measures:

(a) Quality: Percent of prior year audit findings resolved 100%

(b) Output: Percent of payment vouchers submitted to and approved by
the department of finance and administration within seven
days of receipt from vendor 99%

(5) New Mexico state board of public accountancy:

The purpose of the public accountancy board program is to provide efficient licensing and compliance and to protect the public by regulating qualified licensed accountancy professionals.

Appropriations:

(a)	Personal services and employee benefits	256.8	256.8
(b)	Contractual services	68.0	68.0
(c)	Other 161.0	161.0	
(d)	Other financing uses	33.1	33.1

Authorized FTE: 5.00 Permanent

Performance measures:

(a) Output: Average number of days to process and produce licenses for
applicants 5

(6) Board of acupuncture and oriental medicine:

The purpose of the board of acupuncture and oriental medicine program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	60.5	60.5
(b)	Contractual services	56.3	56.3
(c)	Other 33.0	33.0	

(d)	Other financing uses	23.0	23.0
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Authorized FTE: 1.00 Permanent

(7) New Mexico athletic commission:

The purpose of the New Mexico athletic commission is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	78.4	78.4
(b)	Contractual services	11.0	11.0
(c)	Other	39.8	39.8
(d)	Other financing uses	21.2	21.2

Authorized FTE: 1.80 Permanent

(8) Athletic trainer practice board:

The purpose of the athletic trainers practice board is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	10.9	10.9
(b)	Contractual services	.5	.5
(c)	Other	3.5	3.5

Authorized FTE: .20 Permanent

(9) Board of barbers and cosmetology:

The purpose of the board of barbers and cosmetology program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	269.3	269.3
(b)	Contractual services	49.5	49.5

(c)	Other	157.9	157.9
(d)	Other financing uses	71.0	71.0

Authorized FTE: 7.00 Permanent

(10) Chiropractic board:

The purpose of the chiropractic board is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	69.9	69.9
(b)	Contractual services	11.6	11.6
(c)	Other	36.5	36.5
(d)	Other financing uses	19.0	19.0

Authorized FTE: 1.40 Permanent

(11) Counseling and therapy practice board:

The purpose of the counseling and therapy practice board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	213.3	213.3
(b)	Contractual services	22.0	22.0
(c)	Other	121.7	121.7
(d)	Other financing uses	54.7	54.7

Authorized FTE: 5.00 Permanent

(12) New Mexico board of dental health care:

The purpose of the New Mexico board of dental health care is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and
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	employee benefits	171.2	171.2
(b)	Contractual services	46.6	46.6
(c)	Other	91.3	91.3
(d)	Other financing uses	41.3	41.3

Authorized FTE: 4.00 Permanent

Performance measures:

- (a) Efficiency: Average number of hours to respond to telephone calls and inquiries 48
- (b) Output: Average number of days to process and produce licenses for applicants 25

(13) Interior design board:

The purpose of the interior design board is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	10.7	10.7
(b)	Other	10.5	10.5
(c)	Other financing uses	.3	.3

Authorized FTE: .30 Permanent

(14) Board of landscape architects:

The purpose of the board of landscape architects is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	16.5	16.5
(b)	Contractual services	1.0	1.0
(c)	Other	15.9	15.9
(d)	Other financing uses	5.2	5.2

Authorized FTE: .30 Permanent

(15) Board of massage therapy:

The purpose of the board of massage therapy is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	69.3	69.3
(b)	Contractual services	60.0	60.0
(c)	Other	70.2	70.2
(d)	Other financing uses	26.7	26.7

Authorized FTE: 2.20 Permanent

(16) Board of nursing home administrators:

The purpose of the board of nursing home administrators is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	28.1	28.1
(b)	Contractual services	.1	.1
(c)	Other	8.6	8.6
(d)	Other financing uses	5.7	5.7

Authorized FTE: .60 Permanent

(17) Nutrition and dietetics practice board:

The purpose of the nutrition and dietetics practice board is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	14.9	14.9
(b)	Contractual services	.3	.3

(c)	Other	11.0	11.0
(d)	Other financing uses	3.3	3.3

Authorized FTE: .20 Permanent

(18) Board of examiners for occupational therapy:

The purpose of the board of examiners for occupational therapy is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	32.3	32.3
(b)	Contractual services	1.2	1.2
(c)	Other	23.1	23.1
(d)	Other financing uses	8.7	8.7

Authorized FTE: .60 Permanent

(19) Board of optometry:

The purpose of the board of optometry is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	37.5	37.5
(b)	Contractual services	5.8	5.8
(c)	Other	21.5	21.5
(d)	Other financing uses	10.6	10.6

Authorized FTE: .70 Permanent

(20) Board of osteopathic medical examiners:

The purpose of the board of osteopathic medical examiners is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and
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	employee benefits	26.1	26.1
(b)	Contractual services	10.0	10.0
(c)	Other	26.8	26.8
(d)	Other financing uses	8.2	8.2

Authorized FTE: .50 Permanent

(21) Board of pharmacy:

The purpose of the board of pharmacy is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	859.0	859.0
(b)	Contractual services	26.8	26.8
(c)	Other	329.2	329.2
(d)	Other financing uses	86.8	86.8

Authorized FTE: 12.00 Permanent

Performance measures:

- (a) Efficiency: Average number of hours to respond to telephone calls and inquiries 4
- (b) Output: Average number of days to process and produce licenses for applicants 3

(22) Physical therapy board:

The purpose of the physical therapy board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	72.9	72.9
(b)	Contractual services	2.0	2.0
(c)	Other	33.2	33.2

(d)	Other financing uses	17.3	17.3
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Authorized FTE: 1.40 Permanent

(23) Board of podiatry:

The purpose of the board of podiatry is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	16.2	16.2
(b)	Contractual services	3.0	3.0
(c)	Other	7.3	7.3
(d)	Other financing uses	4.0	4.0

Authorized FTE: .30 Permanent

(24) Private investigators and polygraphers advisory board:

The purpose of the private investigators and polygraphers advisory board is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	85.1	85.1
(b)	Contractual services	10.0	10.0
(c)	Other	45.1	45.1
(d)	Other financing uses	21.6	21.6

Authorized FTE: 1.50 Permanent

(25) New Mexico state board of psychologist examiners:

The purpose of the New Mexico state board of psychologist examiners is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	107.2	107.2

(b)	Contractual services	36.0	36.0
(c)	Other	71.3	71.3
(d)	Other financing uses	21.6	21.6

Authorized FTE: 2.50 Permanent

Performance measures:

(a) Efficiency: Average number of hours to respond to telephone calls and inquiries 2

(b) Output: Average number of days to process and produce licenses for applicants 105

(26) Real estate appraisers board:

The purpose of the real estate appraisers board is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	105.0	105.0
(b)	Contractual services	9.0	9.0
(c)	Other	42.5	42.5
(d)	Other financing uses	20.7	20.7

Authorized FTE: 1.80 Permanent

(27) New Mexico real estate commission:

The purpose of the New Mexico real estate commission is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	443.5	443.5
(b)	Contractual services	97.0	97.0
(c)	Other	260.9	260.9
(d)	Other financing uses	60.1	60.1

Authorized FTE: 9.80 Permanent

(28) Advisory board of respiratory care practitioners:

The purpose of the advisory board of respiratory care practitioners is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and			
	employee benefits	34.8		34.8
(b)	Other	14.4	14.4	
(c)	Other financing uses	7.7		7.7

Authorized FTE: .80 Permanent

(29) Board of social work examiners:

The purpose of the board of social work examiners is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and			
	employee benefits	151.2		151.2
(b)	Contractual services	33.0		33.0
(c)	Other	99.1	99.1	
(d)	Other financing uses	41.5		41.5

Authorized FTE: 3.00 Permanent

Performance measures:

(a) Efficiency: Average number of hours to respond to telephone calls and inquiries 24

(b) Output: Average number of days to process and produce licenses for applicants 5

(30) Speech language pathology, audiology and hearing aid dispensing practices board:

The purpose of the speech language pathology, audiology and hearing aid dispensing practices board is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and			
	employee benefits	91.7		91.7
(b)	Contractual services	2.0		2.0
(c)	Other	33.2	33.2	
(d)	Other financing uses	16.3		16.3

Authorized FTE: 1.80 Permanent

(31) Board of thanatopractice:

The purpose of the board of thanatopractice is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and			
	employee benefits	68.5		68.5
(b)	Contractual services	22.5		22.5
(c)	Other	47.9	47.9	
(d)	Other financing uses	15.1		15.1

Authorized FTE: .90 Permanent

Subtotal 18,842.8

PUBLIC REGULATION COMMISSION:

(1) Policy and regulation:

The purpose of the policy and regulation program is to fulfill the constitutional and legislative mandates regarding regulated industries through rulemaking, adjudications and policy initiatives to ensure the provision of adequate and reliable services at fair, just and reasonable rates so that the interests of the consumers and regulated industries are balanced to promote and protect the public interest.

Appropriations:

(a)	Personal services and			
	employee benefits	5,551.4		5,551.4
(b)	Contractual services	453.7		453.7
(c)	Other	1,016.8	145.0	1,161.8

Authorized FTE: 95.00 Permanent

The internal services funds/interagency transfers appropriations to the policy and regulation program of the public regulation commission include one hundred forty-five thousand dollars (\$145,000) from the patient's compensation fund.

On a quarterly basis, the public regulation commission shall submit to the department of finance and administration and the legislative finance committee its data for verification that the agency has reduced the average number of days to complete a water utility rate case by twenty-five percent for fiscal year 2003, and has reduced the number of docketed cases and water utility rate cases on the public regulation commission docket by twenty-five percent from fiscal year 2002. If the commission fails to submit the verification or if the verification does not show that the target has been met, the department of finance and administration shall reduce the general fund appropriation to the policy and regulation program of the public regulation commission by five percent for the ensuing three-month period.

Performance measures:

(a) Outcome: Average cost of electricity per kilowatt hour in New Mexico

for residential customers as a percent of the national

average 102%

(b) Outcome: Average cost of electricity per kilowatt hour in New Mexico

for commercial customers as a percent of the national

average 94%

(c) Outcome: Dollar amount of credits and refunds obtained for New

Mexico consumers through complaint resolution \$5,155,000

(d) Outcome: Average monthly cost of basic telephone service for

commercial customers as a percent of the national average 103.3%

(e) Outcome: Average monthly cost of basic telephone service for

residential customers as a percent of the national average 96.6%

(f) Outcome: Percent reduction in average number of days to complete a

water utility rate case 25%

(g) Outcome: Average number of days to complete a water utility rate case 145.8

(h) Outcome: Percent reduction in the number of water utility rate cases

on the public regulation commission docket 25%

(i) Outcome: Percent reduction in the number of docketed cases before

the public regulation commission 25%

(2) Insurance policy:

The purpose of the insurance policy program is to assure easy public access to reliable insurance products that meet consumers' needs, are underwritten by dependable, reputable, financially sound companies, that charge fair rates and are represented by trustworthy, qualified agents, while promoting a positive competitive business climate.

Appropriations:

(a)	Personal services and				
	employee benefits	2,176.2	1,588.5		3,764.7
(b)	Contractual services	168.7	104.5		273.2
(c)	Other	483.7	141.9	625.6	
(d)	Other financing uses		215.0		215.0

Authorized FTE: 79.00 Permanent

The other state funds appropriations to the insurance policy program of the public regulation commission include three hundred forty thousand eight hundred dollars (\$340,800) from the title insurance maintenance fund, one million one hundred eighty-

one thousand three hundred dollars (\$1,181,300) from the insurance fraud fund, fifty thousand dollars (\$50,000) from the insurance examination fund, sixty thousand dollars (\$60,000) from the public regulation commission reproduction fund and two hundred thousand dollars (\$200,000) from the insurance licensee continuing education fund.

(3) Public safety:

The purpose of the public safety program is to provide services and resources to the appropriate entities and to enhance their ability to protect the public from fire, pipeline hazards and other risks, as assigned to the public regulation commission.

Appropriations:

(a)	Personal services and				
	employee benefits	165.8		1,592.7	1,907.8
(b)	Contractual services	16.5		66.7	83.2
(c)	Other	79.8	733.1	67.1	880.0

Authorized FTE: 41.00 Permanent

The internal services funds/interagency transfers appropriations to the public safety program of the public regulation commission include one million three hundred fifty-

one thousand five hundred dollars (\$1,351,500) for the office of the state fire marshal from the fire protection fund.

The internal services funds/interagency transfers appropriations to the public safety program of the public regulation commission include one million forty-one thousand dollars (\$1,041,000) for the firefighter training academy from the fire protection fund.

Performance measures:

(a) Outcome: Percent of statewide fire districts with insurance services

office ratings of eight or better 65%

(b) Output: Number of inspection audit hours performed by the state

fire marshal's office and pipeline safety bureau 20,220

(c) Output: Number of training contact hours delivered by the state

fire marshal's office, state firefighter training academy

and pipeline safety bureau 198,570

(d) Output: Number of personnel completing training through the state

fire fighter training academy 3,722

(4) Program support:

The purpose of program support is to provide administrative support and direction to ensure consistency, compliance, financial integrity and fulfillment of the agency mission.

Appropriations:

(a) Personal services and

employee benefits	1,579.2	443.0	2,022.2
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(b) Contractual services 10.0

10.0

(c) Other 529.3

529.3

Authorized FTE: 52.00 Permanent

The internal services funds/interagency transfers appropriations to program support of the public regulation commission include seventy-five thousand dollars (\$75,000) from the insurance fraud fund, two hundred fifty thousand dollars (\$250,000) from the fire protection fund, thirty-eight thousand dollars (\$38,000) from the public regulation commission reproduction fund and eighty thousand dollars (\$80,000) from the patient's compensation fund.

Performance measures:

(a) Outcome: Percent of information technology projects completed within

timeframe and budget as referenced in the information

technology project plan 100%

(b) Outcome: Percent of information systems division costs and services

for the agency 10%

(5) Patient's compensation fund:

Appropriations:

(a)	Contractual services	265.0	265.0
(b)	Other	10,057.0	10,057.0
(c)	Other financing uses	225.0	225.0
	Subtotal	28,024.9	

NEW MEXICO BOARD OF MEDICAL EXAMINERS:

(1) Licensing and certification:

The purpose of the licensing and certification program is to provide regulation and licensure to medical doctors, physician assistants and anesthesiologist assistants and to ensure competent and ethical medical care to consumers.

Appropriations:

(a)	Personal services and employee benefits	581.2	581.2
(b)	Contractual services	258.1	258.1
(c)	Other	141.9	141.9

Authorized FTE: 11.00 Permanent

Subtotal	981.2
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BOARD OF NURSING:

(1) Licensing and certification:

The purpose of the licensing and certification program is to regulate nurses, hemodialysis technicians and medication aides and their education and training programs so they can provide competent and professional healthcare services to consumers.

Appropriations:

(a)	Personal services and employee benefits	529.3	529.3
(b)	Contractual services	270.0	270.0
(c)	Other	349.3	349.3

Authorized FTE: 12.00 Permanent

The other state funds appropriation to the licensing and certification program of the board of nursing in the contractual services category includes one hundred thousand dollars (\$100,000) for the center for nursing excellence.

The other state funds appropriation to the licensing and certification program of the board of nursing in the other category includes thirty six thousand dollars (\$36,000) for administration of a pilot program for medication aides in long-term care facilities.

Subtotal 1,148.6

NEW MEXICO STATE FAIR:

(1) State fair:

The purpose of the state fair program is to promote the New Mexico state fair as a year-round operation with venues, events and facilities that provide for greater use of the assets of the agency.

Appropriations:

(a)	Personal services and		
	employee benefits	5,100.8	5,100.8
(b)	Contractual services	3,624.0	3,624.0
(c)	Other	4,534.0	4,534.0

Authorized FTE: 43.00 Permanent; 20.00 Term

Performance measures:

(a) Outcome:	Percent of surveyed attendees at the annual state fair event rating their experience as satisfactory or better	85%
(b) Output:	Number of attendees at annual state fair event	618,000

Subtotal 13,258.8

STATE BOARD OF LICENSURE FOR PROFESSIONAL

ENGINEERS AND SURVEYORS:

(1) Regulation and licensing:

The purpose of the regulation and licensing program is to regulate the practices of engineering and surveying in the state as they relate to the welfare of the public in safeguarding life, health and property and to provide licensed professional engineers and licensed professional surveyors to consumers of engineering and surveying services so they may be assured that only qualified licensees are permitted to provide these services.

Appropriations:

(a)	Personal services and		
	employee benefits	262.4	262.4

(b)	Contractual services	67.9	67.9
(c)	Other	180.6	180.6

Authorized FTE: 7.00 Permanent

Performance measures:

(a) Output: Number of licenses or certifications issued 540

Subtotal 510.9

GAMING CONTROL BOARD:

(1) Gaming control:

The purpose of the gaming control program is to provide strictly regulated gaming activities and to promote responsible gaming to the citizens of New Mexico so they can attain a strong level of confidence in the board's administration of gambling laws and assurance that the state has honest and competitive gaming free from criminal and corruptive elements and influences.

Appropriations:

(a)	Personal services and employee benefits	3,239.8	3,239.8
(b)	Contractual services	652.6	652.6
(c)	Other	1,004.1	1,004.1

Authorized FTE: 57.00 Permanent; .50 Temporary

Performance measures:

(a) Outcome: Percent decrease in repeat findings from prior year's
compliance review of licensees 25%

(b) Output: Percent of licensees with at least one full year of gaming
activity that have had compliance reviews completed 60%

(c) Output: Percent of 2001 compacting tribes having gaming operations
that receive reviews of eighty percent of the forty-six
terms detailed in the compact, given all required
information is provided 75%

(d) Output: Percent decrease in repeat violations by licensed gaming

operators 25%

(e) Quality: Percent of time central monitoring system is operational 99%

Subtotal 4,896.5

STATE RACING COMMISSION:

(1) Horseracing regulation:

The purpose of the horseracing regulation program is to provide regulation in an equitable manner to New Mexico's pari-mutuel horseracing industry to protect the interest of wagering patrons and the state of New Mexico in a manner that promotes a climate of economic prosperity for horsemen, horse owners and racetrack management.

Appropriations:

(a) Personal services and

employee benefits 890.2 890.2

(b) Contractual services 471.3 471.3

(c) Other 198.3 198.3

Authorized FTE: 15.30 Permanent; 1.60 Temporary

Performance measures:

(a) Outcome: Percent of equine samples testing positive for illegal
substance .9%

(b) Outcome: Percent increase of average purse size

(c) Output: Total amount transferred to the general fund from
pari-mutuel revenues, in millions \$1.250

(d) Efficiency: Average regulatory direct cost per live race day at each
racetrack \$3,120

Subtotal 1,559.8

BOARD OF VETERINARY MEDICINE:

(1) Veterinary licensing and regulatory:

The purpose of the veterinary licensing and regulatory program is to regulate the profession of veterinary medicine in accordance with the Veterinary Practice Act and to promote continuous improvement in veterinary practices and management in order to protect the public.

Appropriations:

(a)	Personal services and				
	employee benefits	89.6		89.6	
(b)	Contractual services	62.8		62.8	
(c)	Other	51.3		51.3	
Authorized FTE: 2.00 Permanent					
Subtotal		203.7			
TOTAL COMMERCE AND INDUSTRY		44,581.3	40,278.7	6,479.2	548.7 91,887.9

E. AGRICULTURE, ENERGY AND NATURAL RESOURCES

OFFICE OF CULTURAL AFFAIRS:

(1) Preservation, arts and library services:

The purpose of the preservation, arts and library services program is to provide resources and expertise to local communities and other organizations to develop and preserve prehistoric and historic sites, arts traditions and public libraries.

Appropriations:

(a)	Personal services and				
	employee benefits	3,082.3	493.8	1,657.2	697.0 5,930.3
(b)	Contractual services	277.3	130.3	274.2	92.4 774.2
(c)	Other	1,556.3	120.4	267.6	365.6 2,309.9

Authorized FTE: 87.00 Permanent; 36.50 Term; 10.00 Temporary

The internal services funds/interagency transfers appropriations to the preservation, arts and library services program of the office of cultural affairs include one million dollars (\$1,000,000) from the state highway and transportation department for archaeological studies relating to highway projects.

Performance measures:

- (a) Explanatory: Percent of grant funds distributed to communities outside of Santa Fe, Albuquerque and Las Cruces 51%
- (b) Outcome: Percent of archaeological fieldwork requested by the state highway and transportation department that meet or surpass budget and schedule requirements 87%
- (c) Outcome: Annual number of projects to preserve historic structures

certified to use state or federal tax credits 28

(d) Outcome: Attendance at new programs partially funded by New Mexico

arts, provided by arts organizations statewide 1,000,000

(e) Output: Total number of library materials catalogued in "SALSA" and

"KLAS" online databases, available through the web 888,000

(2) Museum services:

The purpose of the museum services program is to maintain and develop quality museums and monuments, providing exhibitions, performances and programs showcasing New Mexico arts and cultural heritage, as well as national and international cultural traditions.

Appropriations:

(a) Personal services and

employee benefits	10,184.0	1,023.2	11,207.2
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(b) Contractual services	373.7	190.9	564.6
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(c) Other	2,066.4	1,132.0	3,198.4
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Authorized FTE: 259.50 Permanent; 28.50 Term

Performance measures:

(a) Outcome: Percent of museum permanent collections (excluding "bulk"

archaeological, paleontological, archival and library materials) housed in areas that meet museum standards for adequate environmental and storage conditions 70%

(b) Outcome: Percent of museum "bulk" collections (archaeological and paleontological) protected in adequate storage environments 59%

(c) Outcome: Percent of surveyed visitors who experience "enhanced" cultural appreciation and awareness from their visits to agency exhibitions and public programs, as indicated by professionally designed visitor exit surveys 97%

(d) Output: Total attendance to museum exhibitions, performances, films

and other presenting programs 819,456

(3) Education and outreach:

The purpose of the education and outreach program is to provide quality educational programs and statewide outreach.

Appropriations:

(a)	Personal services and					
	employee benefits	2,910.1	780.6	44.9	795.7	4,531.3
(b)	Contractual services	889.3	199.0		305.0	1,393.3
(c)	Other	941.1	527.5	5.0	387.8	1,861.4

Authorized FTE: 58.40 Permanent; 55.50 Term

Performance measures:

- (a) Output: Total number of participants at on-site educational, outreach and special events agency facilities 424,146
- (b) Outcome: Percent of participants attending off-site education and outreach events occurring in communities outside Santa Fe, Albuquerque and Las Cruces, including bookmobile stops 74%

(4) Program support:

The purpose of the program support program is to provide effective, efficient and high-quality delivery of services through agency leadership, management and support.

Appropriations:

(a)	Personal services and					
	employee benefits	1,281.6				1,281.6
(b)	Contractual services	4.6				4.6
(c)	Other	12.2	110.0		122.2	

Authorized FTE: 22.00 Permanent

Any unexpended or unencumbered balance in the office of cultural affairs remaining at the end of fiscal year 2004 from appropriations made from the general fund shall not revert.

Performance measures:

- (a) Outcome: Percent of performance measures' targets in General

Appropriation Act that were met 80%

(b) Output: Number of payment vouchers accurately processed within
seventy-two hours of receipt 9,500

Subtotal 33,179.0

NEW MEXICO LIVESTOCK BOARD:

(1) Livestock inspection:

The purpose of the livestock inspection program is to protect the livestock industry from loss of livestock by theft or straying and to help control the spread of dangerous diseases of livestock.

Appropriations:

(a)	Personal services and				
	employee benefits	106.7	2,067.9		2,174.6
(b)	Contractual services		188.5		188.5
(c)	Other	757.2		757.2	

Authorized FTE: 56.20 Permanent

Performance measures:

(a) Outcome: Average percent of investigation findings completed within
one month 85%

(b) Outcome: Number of livestock thefts reported per 1,000 head inspected 1.5

(c) Output: Number of road stops per month 30

(2) Meat inspection:

The purpose of the meat inspection program is to provide meat inspection service to meat processors and slaughterers to assure consumers of clean, wholesome and safe products.

Appropriations:

(a)	Personal services and				
	employee benefits	369.6	6.0	369.6	745.2
(b)	Contractual services	2.9	6.0	3.0	11.9
(c)	Other	77.2	6.0	77.2	160.4

Authorized FTE: 17.80 Permanent

The general fund appropriation to the New Mexico livestock board for its meat inspection program, including administrative costs, is contingent upon a dollar-for-

dollar match of federal funds for that program.

Performance measures:

- (a) Outcome: Percent of inspections where violations are found 2%
- (b) Outcome: Number of violations resolved within one day 100
- (c) Output: Number of establishments checked for compliance 550

(3) Administration:

The purpose of the administration program is to provide administrative and logistical services to employees.

Appropriations:

(a)	Personal services and employee benefits	64.9	279.0	64.9	408.8
(b)	Contractual services		17.8		17.8
(c)	Other	90.5		90.5	

Authorized FTE: 8.00 Permanent

Performance measures:

- (a) Outcome: Number of annual audit findings 0
- (b) Outcome: Number of prior year audit findings resolved 5
- (c) Efficiency: Percent of vouchers processed within five days 85%
- (d) Output: Number of payment vouchers processed 3,000

Subtotal 4,554.9

DEPARTMENT OF GAME AND FISH:

(1) Sport hunting and fishing:

The purpose of the sport hunting and fishing program is to provide a statewide system for hunting activities as well as self-sustaining and hatchery-supported fisheries taking into account hunter safety, quality hunts, high-demand areas, guides and outfitters and quotas and assuring that local and financial interests receive consideration.

Appropriations:

(a) Personal services and

	employee benefits		5,460.4	3,632.5	9,092.9
(b)	Contractual services		503.7	674.0	1,177.7
(c)	Other	3,924.2	694.9	4,619.1	
(d)	Other financing uses			315.0	315.0

Authorized FTE: 175.00 Permanent; 2.00 Term; 8.50 Temporary

The internal services funds/interagency transfers appropriations to the sport hunting and fishing program of the department of game and fish includes one hundred thousand dollars (\$100,000) from the game protection fund for Ute dam operation. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 from this appropriation shall revert to the game protection fund.

Performance measures:

- (a) Outcome: Angler opportunity and success 75%
- (b) Outcome: Number of days of elk hunting opportunity provided to New Mexico resident hunters on an annual basis 118,000
- (c) Outcome: Percent of public hunting licenses drawn by New Mexico resident hunters 80%
- (d) Output: Annual output of fish, in pounds, from the department's hatchery system 375,000

(2) Conservation services:

The purpose of the conservation services program is to provide information and technical guidance to any person wishing to conserve and enhance wildlife habitat and recover indigenous species of threatened and endangered wildlife.

Appropriations:

(a)	Personal services and				
	employee benefits	82.4	957.3	990.0	2,029.7
(b)	Contractual services	10.1	493.1	510.6	1,013.8
(c)	Other	32.1	1,231.5	1,246.3	2,509.9

Authorized FTE: 31.00 Permanent; 8.00 Term; 1.00 Temporary

Performance measures:

- (a) Outcome: Number of habitat improvement projects completed in cooperation with private, state and federal entities 80

The purpose of the healthy ecosystems program is to protect healthy ecosystems throughout the state by identifying at-risk areas, especially those with high fire danger, preventing additional damage, restoring damaged areas and increasing the use of renewable and alternative resources.

Appropriations:

(a)	Personal services and					
	employee benefits	2,664.4	52.7		1,435.2	4,152.3
(b)	Contractual services	75.1		755.7	1,622.4	2,453.2
(c)	Other	512.7	31.0	402.8	666.8	1,613.3
(d)	Other financing uses			1,158.5	1,463.7	2,622.2

Authorized FTE: 59.50 Permanent; 19.50 Term

Performance measures:

- (a) Outcome: Percent of inventoried, orphaned wells that are plugged 23.8%
- (b) Outcome: Percent increase in alternative fuels consumption of gasoline-equivalent gallons from state-sponsored activities 15%
- (c) Output: Number of orphaned wells plugged 45
- (d) Output: Number of acres restored 18,000
- (e) Output: Number of seedlings delivered through conservation tree seedling program 170,147
- (f) Explanatory: Number of abandoned mines safeguarded 40

(2) Outdoor recreation:

The purpose of the outdoor recreation program is to create the best recreational opportunities possible in state parks by preserving cultural and natural resources, continuously improving facilities and providing quality, fun activities and to do it all efficiently.

Appropriations:

(a)	Personal services and					
	employee benefits	5,814.8	4,368.4		241.3	10,424.5
(b)	Contractual services	235.7	38.1		1,030.0	1,303.8
(c)	Other	1,680.0	2,621.0	2,040.6	314.2	6,655.8

(d)	Other financing uses	2,040.6	2,040.6
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Authorized FTE: 220.00 Permanent; 5.00 Term; 47.00 Temporary

Performance measures:

(a) Output:	Number of interpretive programs available to park visitors	1,295
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(b) Output:	Number of visitors participating in interpretive programs, including displays at visitor centers and self-guided tours	100,000
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(c) Output:	Number of boat safety inspections conducted	8,386
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(d) Explanatory:	Number of visitors to state parks	4,000,000
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(e) Explanatory:	Percent of general fund to total funds	38%
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(f) Explanatory:	Self-generated revenue per visitor, in dollars	\$0.86
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(3) Voluntary compliance:

The purpose of the voluntary compliance program is to encourage mining and oil and gas operators to develop workable permits and to comply with those permits by providing sound technical review, monitoring operators and resolving violations.

Appropriations:

(a)	Personal services and employee benefits	3,481.3	602.8	721.5	4,805.6	
(b)	Contractual services	51.5	43.9	48.7	144.1	
(c)	Other	912.5	10.0	93.3	164.1	1,179.9
(d)	Other financing uses	703.1	154.7	857.8		

Authorized FTE: 77.00 Permanent; 9.00 Term

Performance measures:

(a) Output:	Number of inspections conducted per year to ensure mining is being conducted in compliance with approved permits and regulations	278
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(b) Output: Number of inspections of oil and gas wells and associated facilities 21,250

(4) Energy efficiency:

The purpose of the energy efficiency program is to promote energy efficiency through numerous mechanisms, ranging from pollution prevention efforts to reducing energy consumption in homes, schools, public buildings and commercial applications, while improving the quality of the workplace and saving taxpayer dollars.

Appropriations:

(a)	Personal services and				
	employee benefits	462.6	120.0	582.6	
(b)	Contractual services	.9	200.0	427.6	628.5
(c)	Other	6.3	134.4	140.7	
(d)	Other financing uses	240.0	100.0	340.0	

Authorized FTE: 7.00 Permanent; 1.50 Term

Performance measures:

(a) Output: Energy savings, in millions of British thermal units, as a result of state-sponsored projects 44,084

(b) Explanatory: Annual utility costs for state-owned buildings pursuant to Executive Order 99-40 \$9,247,282

(5) Program support:

The purpose of program support is to support department program functions so goals can be met by providing equipment, supplies, services, personnel, information, funds, policies, and training.

Appropriations:

(a)	Personal services and				
	employee benefits	2,479.8	115.7	2,595.5	
(b)	Contractual services	63.9	3.8	67.7	
(c)	Other	241.5	180.5	422.0	

Authorized FTE: 41.50 Permanent; 3.00 Term

Subtotal 43,030.1

YOUTH CONSERVATION CORPS:

The purpose of the youth conservation corps program is to fund the employment of New Mexicans between the ages of fourteen and twenty-five on projects that will improve New Mexico's natural, cultural, historical and agricultural resources.

Appropriations:

(a)	Personal services and		
	employee benefits	116.2	116.2
(b)	Contractual services	1,943.9	1,943.9
(c)	Other	56.9	56.9

Authorized FTE: 2.00 Permanent

Performance measures:

(a) Output: Number of projects funded in a year that improve New Mexico's natural and community resources 35

(b) Output: Number of youth employed annually 300

Subtotal 2,117.0

COMMISSIONER OF PUBLIC LANDS:

(1) Land trust stewardship:

The purpose of the land trust stewardship program is to provide responsible, accountable management of renewable and nonrenewable resources on state trust lands in order to produce optimal revenue for financial benefit by the beneficiary institutions and to protect and enhance the health of the land for future generations.

Appropriations:

(a)	Personal services and		
	employee benefits	8,354.6	8,354.6
(b)	Contractual services	931.5	931.5
(c)	Other	1,986.1	1,986.1
(d)	Other financing uses	677.5	677.5

Authorized FTE: 153.00 Permanent; 4.00 Temporary

Performance measures:

(a) Outcome: Number of dollars obtained through oil and gas audit

	activity, in thousands	\$2,844.1	
(b) Outcome:	Bonus income per leased acre from oil and gas activities		\$105.00
(c) Output:	Projected revenue, in millions	\$192.9	
(d) Output:	Average income per acre from agriculture leasing activities		\$0.85
(e) Output:	Average income per acre from commercial leasing activities		\$0.25
(f) Output:	Average income per acre from oil and natural gas activities		\$22.50
(g) Output:	Number of lease and attachment documents imaged in fiscal		
	year 2004	560,000	
Subtotal			11,949.7

STATE ENGINEER:

(1) Water resource allocation:

The purpose of the water resource allocation program is to provide for efficient use of the available surface and underground waters of the state to any person so they can maintain their quality of life and to provide safety inspections of all nonfederal dams within the state to owners and operators of such dams so they can operate the dams safely.

Appropriations:

(a)	Personal services and			
	employee benefits	5,578.5	228.7	5,807.2
(b)	Contractual services	33.5	600.0	633.5
(c)	Other	672.8	188.3	861.1

Authorized FTE: 107.00 Permanent

The internal services funds/interagency transfers appropriation to the water resources allocation program of the state engineer includes six hundred thousand dollars (\$600,000) from the improvement of the Rio Grande fund.

Performance measures:

(a) Outcome:	Percent of applications abstracted into the water	
	administration technical engineering resource system	
	database	29%
(b) Output:	Average number of unprotested new and pending applications	
	processed per month	75

(c) Output: Average number of protested and aggrieved applications
processed per month 12

(d) Explanatory: Number of unprotested and unaggrieved water right
applications backlogged 600

(e) Explanatory: Number of protested and aggrieved water rights backlogged
175

(2) Interstate stream compact compliance and water development:

The purpose of the interstate stream compact compliance and water development program is to provide resolution of federal and interstate water issues and to develop water resources and stream systems for the people of New Mexico so they can have maximum sustained beneficial use of available water resources.

Appropriations:

(a)	Personal services and				
	employee benefits	1,529.2	94.4		1,623.6
(b)	Contractual services	498.4	35.0	6,199.2	6,732.6
(c)	Other	259.8	68.9	2,205.8	2,534.5

Authorized FTE: 22.00 Permanent; 1.00 Temporary

The internal services funds/interagency transfers appropriation to the interstate stream compact compliance and water development program of the state engineer includes five million nine hundred forty thousand dollars (\$5,940,000) from the irrigation works construction fund. Of this amount three million seven hundred thirty-four thousand two hundred dollars (\$3,734,200) is in the contractual services category and two million two hundred five thousand eight hundred dollars (\$2,205,800) is in the other category.

The internal services funds/interagency transfers appropriation to the interstate stream compact compliance and water development program of the state engineer includes two million four hundred sixty-five thousand dollars (\$2,465,000) in the contractual services category from the improvements of the Rio Grande fund.

Performance measures:

(a) Outcome: Pecos river compact accumulated deliveries, in acre feet 0

(b) Outcome: Rio Grande river compact accumulated deliveries, in acre
feet 0

(c) Explanatory: Cumulative number of regional water plans completed and
accepted by interstate stream commission 8

(3) Litigation and adjudication:

The purpose of the litigation and adjudication program is to obtain a judicial determination and definition of water rights within each stream system and underground basin to effectively perform water rights administration and meet interstate stream obligations.

Appropriations:

(a)	Personal services and			
	employee benefits	3,184.3		3,184.3
(b)	Contractual services	50.0	2,500.0	2,550.0
(c)	Other	459.6	459.6	

Authorized FTE: 53.00 Permanent

The internal services funds/interagency transfers appropriation to the litigation and adjudication program of the state engineer includes two million five hundred thousand dollars (\$2,500,000) in the contractual services category from the irrigation works construction fund.

Performance measures:

- (a) Outcome: Number of offers to defendants in adjudications 2,200
- (b) Outcome: Percent of all water rights that have judicial determinations 15%

(4) Program support:

The purpose of program support is to provide necessary administrative support to the office of the state engineer so it can be successful in reaching its goals and objectives.

Appropriations:

(a)	Personal services and			
	employee benefits	1,749.4		1,749.4
(b)	Contractual services	256.9		256.9
(c)	Other	466.8	466.8	

Authorized FTE: 28.00 Permanent

The state engineer shall transfer unused lease payment amounts to the general services department for the operational costs of the west capitol complex. The transfer of funds shall begin thirty days prior to occupancy.

Performance measures:

- (a) Output: Percent of department contracts that include performance measures 100%

(5) New Mexico irrigation works construction fund:

Appropriations:

(a)	Other financing uses	5,216.9	3,223.1	8,440.0
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The appropriation to the irrigation works construction program of the state engineer includes (1) two million dollars (\$2,000,000) 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 from any source other than the irrigation works construction fund or improvement of the Rio Grande fund and provided that no more than two hundred and fifty thousand dollars (\$250,000) shall be appropriated to one acequia per fiscal year or for the construction, improvement, repair and protection from floods of dams, reservoirs, ditches, flumes and appurtenances of community ditches in the state; and provided that not more than one hundred twenty thousand dollars (\$120,000) of this appropriation shall be used for any one community ditch under the interstate stream commission 80/20 program and no state funds other than loans may be used to meet the acequia's twenty percent share of the total cost of the project; and (2) two hundred fifty thousand dollars (\$250,000) for planning, design, supervision of construction and construction of approved acequia improvement projects in cooperation with the United States department of agriculture, United States department of interior, United States department of the army or other engineers. The state engineer may enter into cooperative agreements with the owners or commissioners of ditch associations to ensure that 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.

The appropriation to the irrigation works construction program of the state engineer includes: (1) grants, in such amounts as determined by the interstate stream commission, for construction, improvement, repair and protection from floods of dams, reservoirs, ditches, flumes and appurtenances of community ditches in the state located on Indian land whether pueblo or reservation; (2) one million five hundred thousand dollars (\$1,500,000) for loans to irrigation districts and soil and water conservation districts for re-loan to farmers for implementation of water conservation improvements; and (3) five hundred thousand dollars (\$500,000) for small loans to acequias and community ditches for construction of improvements.

(6) Debt service fund:

Appropriations:

(a)	Other financing uses		270.0	270.0
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(7) IWCF/IRGF income funds:

Appropriations:

(a)	Other financing uses		4,625.5	4,625.5
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(8) Improvement of the Rio Grande fund:

Appropriations:

(a)	Other financing uses	1,932.6	1,132.4	3,065.0
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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.

The general fund and other state fund appropriations to the state engineer in the contractual services category are contingent upon the state engineer including performance measures in its contracts to increase contract oversight and accountability.

Subtotal 43,260.0

ORGANIC COMMODITY COMMISSION:

(1) New Mexico organic:

The purpose of the New Mexico organic program is to provide regulatory, educational and promotional activities to the organic agriculture industry in New Mexico so that they can increase the market of certified organic products.

Appropriations:

(a)	Personal services and			
	employee benefits	190.0	7.5	197.5
(b)	Contractual services	16.8		16.8
(c)	Other	35.6	30.9	66.5

Authorized FTE: 4.00 Permanent

Performance measures:

- (a) Outcome: Percent increase in organic market, measured in gross dollar sales 10%
- (b) Outcome: Percent of people who felt they learned something at annual conference 80%
- (c) Output: Number of certified businesses 100
- (d) Output: Number of spot checks performed 20
- (e) Output: Number of client requests for assistance 10
- (f) Output: Number of attendees at annual organic farming conference 550

Subtotal 280.8

TOTAL AGRICULTURE, ENERGY AND

NATURAL RESOURCES 57,989.4 41,149.9 46,475.4 20,208.1 165,822.8

F. HEALTH, HOSPITALS AND HUMAN SERVICES

COMMISSION ON THE STATUS OF WOMEN:

(1) Status of women:

The purpose of the status of women program is to provide information, public events, leadership, support services and career development to individuals, agencies and women's organizations so they can improve the economic, health and social status of women in New Mexico.

Appropriations:

(a)	Personal services and			
	employee benefits	318.2	121.0	439.2
(b)	Contractual services	10.2	812.6	822.8
(c)	Other	120.1	267.0	387.1

Authorized FTE: 7.00 Permanent; 2.00 Term

The internal services funds/interagency transfer appropriations to the commission on the status of women include one million two hundred thousand six hundred dollars (\$1,200,600) for the teamworks program directed toward workforce development for adult women on temporary assistance for needy families from the federal block grant funding to New Mexico.

Performance measures:

- (a) Outcome: Number of paid employment teamworks placements 150
- (b) Outcome: Percent of teamworks participants employed nine months after initial employment placement 70%

Subtotal 1,649.1

OFFICE OF AFRICAN AMERICAN AFFAIRS:

(1) Public awareness:

The purpose of the public awareness program is to provide information and advocacy services to all New Mexicans and to empower African Americans of New Mexico to improve their quality of life.

Appropriations:

(a)	Personal services and			
	employee benefits	100.0		100.0
(b)	Contractual services	68.0		68.0
(c)	Other	82.0	82.0	

Authorized FTE: 2.00 Permanent

Subtotal 250.0

COMMISSION FOR DEAF AND HARD-OF-HEARING PERSONS:

(1) Deaf and hard-of-hearing:

The purpose of the deaf and hard-of-hearing program is: (1) to provide advocacy, outreach referral and education services to deaf and hard-of-hearing persons to improve their quality of life; and (2) to oversee the New Mexico telecommunications relay network for deaf and hard-of-hearing citizens, government agencies, institutions, businesses and hearing individuals affiliated with those who have a hearing loss so that deaf and hard-of-hearing persons have equal access to telecommunications services.

Appropriations:

(a)	Personal services and			
	employee benefits	389.0	199.0	588.0
(b)	Contractual services	1,690.7	5.0	1,695.7
(c)	Other	106.8	59.8	166.6

Authorized FTE: 11.00 Permanent; 1.00 Term

The other state funds appropriation to the commission for the deaf and hard-of-

hearing persons includes five hundred twenty-five thousand seven hundred dollars (\$525,700) from balances and surcharges from the telecommunications access fund for the operation of the commission in fiscal year 2004 contingent on House Bill 675 of the first session of the forty-sixth legislature or similar legislation becoming law. If House Bill 675 is not enacted, five hundred twenty-five thousand seven hundred dollars (\$525,700) is appropriated to the commission for deaf and hard-of-hearing persons from the appropriation contingency fund.

The other state funds appropriation to the commission for deaf and hard-of-

hearing persons in the contractual services category includes forty thousand dollars (\$40,000) to coordinate and provide deaf services in public schools throughout the state.

Performance measures:

(a) Output:	Number of clients served	3,000
Subtotal		2,450.3

MARTIN LUTHER KING, JR. COMMISSION:

The purpose of the Martin Luther King, Jr. program is to promote Martin Luther King, Jr.'s nonviolent principles and philosophy to the people of New Mexico through remembrance, celebration and action, so everyone gets involved in making a difference toward the improvement of interracial cooperation and helping to reduce youth violence in our communities.

Appropriations:

(a)	Personal services and			
	employee benefits	98.9		98.9
(b)	Contractual services	14.3		14.3

(c) Other 71.6 71.6

Authorized FTE: 2.00 Permanent

Subtotal 184.8

COMMISSION FOR THE BLIND:

(1) Blind services:

The purpose of the blind services program is to assist blind or visually impaired citizens of New Mexico to achieve economic and social equality so they can have independence based on their personal interests and abilities.

Appropriations:

(a)	Personal services and				
	employee benefits	774.0	541.9	2,808.6	4,124.5
(b)	Contractual services	41.0	28.6	148.7	218.3
(c)	Other	617.9	432.5	2,242.0	3,292.4
(d)	Other financing uses	14.1	9.9	51.0	75.0

Authorized FTE: 105.00 Permanent; 9.00 Term; 1.70 Temporary

Any unexpended or unencumbered balances in the commission for the blind remaining at the end of fiscal year 2004 from appropriations made from the general fund shall not revert.

Performance measures:

- (a) Output: Number of quality employment opportunities for blind or visually impaired consumers of New Mexico 35
- (b) Output: Number of blind or visually impaired consumers trained in the skills of blindness to enable them to live independently in their homes and communities 380
- (c) Outcome: Average employment hourly wage for the blind or visually impaired person \$10.50
- (d) Output: Number of employment opportunities provided for blind business entrepreneurs in different vending and food facilities through the business enterprise program 30

Subtotal 7,710.2

NEW MEXICO OFFICE OF INDIAN AFFAIRS:

(1) Indian affairs:

The purpose of the Indian affairs program is to serve as the coordinating body between state government and tribal government for New Mexico Indian tribes so they can address issues pertaining to health, economy, legislation and social issues in the most efficient way.

Appropriations:

(a)	Personal services and			
	employee benefits	528.9		528.9
(b)	Contractual services	592.2		592.2
(c)	Other	765.9	765.9	

Authorized FTE: 10.00 Permanent

The general fund appropriation to the Indian affairs program of the New Mexico office of Indian affairs in the contractual services category includes three hundred thousand dollars (\$300,000) for emergency management service for the Navajo Nation in San Juan and McKinley counties, and the other category includes eighty thousand dollars (\$80,000) for development of curriculum at the southwest Indian polytechnic institute.

Performance measures:

(a) Outcome:	Percent of capital outlay projects closed	10%
(b) Outcome:	Percent of employee files that contain performance appraisals completed and submitted within state personnel guidelines	100%

Subtotal 1,887.0

STATE AGENCY ON AGING:

(1) Elder rights and health advocacy:

The purpose of the elder rights and health advocacy program is to provide support and education for residents of long-term care facilities along with older individuals and their families so they are aware of the most current information about services and benefits, allowing them to protect their rights and make informed choices about quality service.

Appropriations:

(a)	Personal services and			
	employee benefits	468.1	580.1	1,048.2
(b)	Contractual services	55.8	37.3	93.1

(c) Other 151.4 231.1 382.5

Authorized FTE: 10.00 Permanent; 10.00 Term

Performance measures:

(a) Output: Number of client contacts to assist on health insurance and
benefits choices 19,500

(b) Outcome: Percent of long-term care complaints resolved during the
federal fiscal year 80%

(c) Output: Number of volunteers trained to provide health insurance
and benefits assistance 50

(d) Output: Number of clients who receive assistance to access low- or
no-cost prescription drugs 2,000

(2) Older worker:

The purpose of the older worker program is to provide training, education and work experience to older individuals so they can enter or re-enter the work force and receive appropriate income and benefits.

Appropriations:

(a) Other 792.9 766.8 1,559.7

Performance measures:

(a) Outcome: Percent of individuals participating in the state older
worker program obtaining unsubsidized, permanent employment 5%

(b) Outcome: Percent of individuals participating in the federal older
worker program obtaining unsubsidized, permanent employment 20%

(3) Community involvement:

The purpose of the community involvement program is to provide supportive social and nutrition services for older individuals so they can remain independent and involved in their communities.

Appropriations:

(a) Other 18,066.0 7,089.9 25,155.9

(b) Other financing uses 210.7 210.7

The general fund appropriation to the community involvement program of the state agency on aging to supplement federal Older Americans Act programs shall be contracted to the designated area agencies on aging. The general fund appropriation to the community involvement program of the state agency on aging includes one hundred thousand dollars (\$100,000) to fund an activity-based study which may be matched with federal funds.

The general fund appropriation to the community involvement program of the state agency on aging includes four hundred thousand dollars (\$400,000) to provide increased salaries and retirement benefits for senior center and community providers.

Performance measures:

- (a) Output: Unduplicated number of persons receiving home-delivered meals 11,000
- (b) Output: Unduplicated number of persons receiving congregate meals 28,000
- (c) Output: Number of homemaker hours provided 104,000
- (d) Output: Number of adult daycare service hours provided 175,000
- (e) Output: Number of hours of respite care provided 139,000
- (f) Output: Number of participants in local and national senior olympic games 2,500
- (g) Output: Number of children served through the foster grandparent program 2,500
- (h) Output: Number of home-bound clients served through the senior companion program 1,500

(4) Program support:

The purpose of program support is to provide internal administrative and management support to agency staff, outside contractors and external control agencies so they can implement and manage agency programs.

Appropriations:

- (a) Personal services and employee benefits 1,467.7 526.9 1,994.6
- (b) Contractual services 89.9 16.8 106.7
- (c) Other 159.3 184.5 343.8

Authorized FTE: 29.00 Permanent; 2.00 Term

Any unexpended or unencumbered balances in the state agency on aging remaining at the end of fiscal year 2004 from general fund appropriations shall revert to the general fund sixty days after fiscal year 2003 audit reports have been approved by the state auditor.

Performance measures:

(a) Outcome: Percent of contractors assessed with no significant findings 75%

(b) Output: Number of program performance and financial expenditure reports analyzed and processed within established deadlines 850

Subtotal 30,895.2

HUMAN SERVICES DEPARTMENT:

(1) Medical assistance:

The purpose of the medical assistance program is to provide the necessary resources and information to enable low-income individuals to obtain either free or low-cost health care.

Appropriations:

(a)	Personal services and				
	employee benefits	2,835.8	128.0	4,182.1	7,145.9
(b)	Contractual services	7,005.7	1,138.9	18,771.9	26,916.5
(c)	Other	392,477.6	29,551.1	72,913.3	1,525,280.0
					2,020,222.0
(d)	Other financing uses	16,498.1	123.3	57,780.4	74,401.8

Authorized FTE: 139.00 Permanent

The medical assistance program of the human services department shall make changes to the medicaid program consistent with the recommendations of the medicaid reform committee contingent on enactment of House Bill 384, Senate Bill 338 or similar legislation of the first session of the forty-sixth legislature.

The internal services funds/interagency transfers appropriations for the medical assistance program of the human services department include five hundred thousand dollars (\$500,000) from the department of health to leverage two million dollars (\$2,000,000) of Rural Primary Healthcare Act funds within the medicaid program contingent on approval and implementation of an alternative prospective payment system to reimburse federally qualified health centers for services to medicaid and salud patients that more effectively protects the federal qualified health centers safety net providers from the effects of medical inflation, and approval and implementation of a methodology for the human services department to reimburse federally qualified health centers for the salaries and overhead costs for medicaid outstationed eligibility workers employed at federally qualified health centers.

~~[The medical assistance program may receive intergovernmental and interagency transfers. Such transfers are appropriated to the program for the purpose of matching federal medicaid funds relative to enhanced medicaid disproportionate share allocations for qualified hospitals, increases in upper payment limit capacities, non-entitlement waiver programs that reduce the number of uninsured and/or other efforts to maximize federal dollars. The transfers shall be reviewed by the legislative finance committee and are contingent on certification by the secretary of finance and administration that no additional general fund appropriation will be required.] [LINE-ITEM VETO]~~

The medical assistance program of the human services department shall promulgate and adopt regulations and, if necessary, make medicaid state plan amendments to provide for the reimbursement of emergency medical treatment provided by licensed healthcare providers to undocumented persons referred by any federal agency pursuant to federal law.

Performance measures:

- (a) Outcome: Percent of children enrolled in medicaid managed care receiving annual dental exam 47%
- (b) Outcome: Percent of children in medicaid receiving early and periodic screening, diagnosis and treatment services 82%
- (c) Outcome: Percent of adolescents in medicaid managed care receiving well-care visits 46%
- (d) Outcome: Percent of women enrolled in medicaid and in the age-appropriate group receiving breast cancer screens 64%
- (e) Outcome: Percent of women enrolled in medicaid and in the age-appropriate group receiving cervical cancer screens. 69%

(2) Income support:

The purpose of the income support program is to provide cash assistance and supportive services to eligible low-income families so that they can achieve self-sufficiency.

Appropriations:

(a)	Personal services and				
	employee benefits	15,784.9		17,168.9	32,953.8
(b)	Contractual services	4,555.0		22,779.5	27,334.5
(c)	Other	17,619.4	1,085.2	249,019.1	267,723.7
(d)	Other financing uses			54,039.4	54,039.4

Authorized FTE: 882.00 Permanent

The appropriations to the income support program of the human services department include one million five hundred four thousand five hundred dollars (\$1,504,500) from the general fund and thirteen million six hundred thirty-two thousand four hundred dollars (\$13,632,400) from the federal temporary assistance for needy families block grant for administration of the New Mexico Works Act.

The appropriations to the income support program of the human services department include eleven million eight hundred fifty-two thousand five hundred dollars (\$11,852,500) from the general fund and fifty-nine million four hundred eighty-six thousand nine hundred dollars (\$59,486,900) from the federal temporary assistance for needy families block grant to provide cash assistance grants to participants as defined in the New Mexico Works Act, including education grants, clothing allowances, temporary assistance for needy families, state-funded aliens, and one-time diversion payments and wage subsidies. The appropriations include one million three hundred thousand dollars (\$1,300,000) from the federal temporary assistance for needy families block grant to provide cash assistance for the Navajo Nation program. Included is one hundred eighty-six thousand nine hundred dollars (\$186,900) from the federal temporary assistance for needy families block grant to provide cash assistance for the Zuni Pueblo program.

The appropriations to the income support program of the human services department include eighteen million three hundred thousand dollars (\$18,300,000) from the federal temporary assistance for needy families block grant for support services, including ten million dollars (\$10,000,000) for job training and placement, three million dollars (\$3,000,000) for expanded assessment and case management, two million dollars (\$2,000,000) for a domestic violence program, three hundred thousand dollars (\$300,000) for teen pregnancy programs, four hundred thousand dollars (\$400,000) for employment-related costs, one million dollars (\$1,000,000) for a family preservation and fatherhood initiative, one hundred thousand dollars (\$100,000) for micro-

enterprise training and one million five hundred thousand dollars (\$1,500,000) for transportation services.

The appropriations to the income support program of the human services department include fifty-two million six hundred thirty-three thousand eight hundred dollars (\$52,633,800) from the federal temporary assistance for needy families block grant for transfers to other agencies, including one million three hundred thousand dollars (\$1,300,000) to the state department of public education for teen pregnancy education and prevention, two million nine hundred eighty-two thousand five hundred dollars (\$2,982,500) to the state department of public education for early childhood development, four million dollars (\$4,000,000) to the state department of public education for full-day kindergarten, one million dollars (\$1,000,000) to the state department of public education for adult basic education, one million two hundred thousand dollars (\$1,200,000) to the commission on the status of women for the teamworks program, two million dollars (\$2,000,000) to the children, youth and families department for adult protective services, thirty-two million seven hundred fifty-one thousand three hundred dollars (\$32,751,300) to the children, youth and families department for childcare programs, one million dollars (\$1,000,000) to the children, youth and families department for childcare training services, six hundred thousand dollars (\$600,000) to the children, youth and families department for domestic violence services, eight hundred thousand dollars (\$800,000) to the state highway and transportation department for transportation services, two million dollars (\$2,000,000) to the economic development department for the development training program, one million dollars (\$1,000,000) to the commission on higher education for nurse and teacher training, one million dollars (\$1,000,000) to the state agency on aging for the gold mentor program and one million dollars (\$1,000,000) to the department of health for substance abuse.

Five hundred thousand dollars (\$500,000) of the appropriation to the children youth and families for child care training is contingent on development of a program for assisting early childhood development teachers who are clients of the temporary assistance for needy families program and enrolled in a post-secondary degree program to improve their employment skills. This appropriation is contingent on the children, youth and families department developing a program consistent with temporary assistance for needy families funding guidelines after review by the human services department and the legislative finance committee.

The four million dollars (\$4,000,000) from the federal funds appropriation for full-day kindergarten slots shall only be used for students eligible for temporary assistance for needy families. This appropriation is sufficient to fund temporary assistance for needy families full-day kindergarten slots at the 2003-2004 school year unit value. Eligibility determination for the kindergarten slots shall coincide with eligibility for the free or reduced school lunch program. These funds shall be transferred to the state department of public education and identified separately.

The one million dollars (\$1,000,000) from the federal funds appropriation for post-secondary education shall only be used for persons with incomes below 200 percent of the federal poverty level. Support for the participants will be in the form of tuition for full-time students enrolled in programs that result in professional nursing or teaching certification. Funds may also be used for direct costs in proportion to the number of eligible participants in the program. Appropriate administrative costs are also allowed. The appropriation is contingent on the commission for higher education developing a program consistent with temporary assistance for needy families funding guidelines after review by the human services department, department of finance and administration and the legislative finance committee. These funds shall be transferred to the commission for higher education, identified separately and used only for eligible participants.

The general fund appropriations to the income support program of the human services department include four million seven hundred thousand dollars (\$4,700,000) for general assistance.

The human services department shall provide the department of finance and administration and the legislative finance committee quarterly reports on the expenditures of the federal temporary assistance for needy families block grant and the state maintenance-of-effort expenditures.

Performance measures:

(a) Output: Number of temporary assistance for needy family clients
placed in jobs 7,000

(b) Output: Percent of families leaving the temporary assistance for
needy families program who receive at least one month of
food stamp benefits 65%

(c) Output: Percent of families leaving the temporary assistance for
needy families program who receive medicaid 95%

(d) Outcome: Percent of temporary assistance for needy families
recipients leaving temporary assistance for needy families
in thirty months or less 75%

(e) Outcome: Percent of all temporary assistance for needy families
meeting participation requirements 50%

(f) Outcome: Percent of two-parent temporary assistance for needy
families meeting participation requirements 70%

(3) Child support enforcement:

The purpose of the child support enforcement program is to provide location, establishment and collection services for custodial parents and their children; to ensure that all court orders for support payments are being met to maximize child support collections; and to reduce public assistance rolls.

Appropriations:

(a)	Personal services and				
	employee benefits	2,660.6	2,319.9	9,252.3	14,232.8
(b)	Contractual services	3,242.0	1,604.0	9,072.0	13,918.0
(c)	Other	2,263.5	573.6	5,269.0	8,106.1

Authorized FTE: 357.00 Permanent

The other state funds appropriation to the child support enforcement program includes one million five hundred thousand dollars (\$1,500,000) in fund balance identified by a federal audit. If some or any part of this fund balance is unavailable, then an amount equal to the unavailable portion up to a maximum of one million five hundred thousand dollars (\$1,500,000) may be transferred from the appropriation contingency fund to the child support enforcement program of the human services department. Five hundred thousand dollars (\$500,000) of this appropriation plus the corresponding federal match are in the contractual services category for additional hearing officers and other employees associated with establishing support orders.

Performance measures:

- (a) Outcome: Amount of child support collected, in millions \$70
- (b) Outcome: Percent of current support owed that is collected 55%
- (c) Outcome: Percent of cases with support orders 45%
- (d) Outcome: Percent of children born out-of-wedlock with voluntary paternity acknowledgment 55%

(4) Program support:

The purpose of program support is to provide overall leadership, direction and administrative support to each agency program and to assist each in achieving its programmatic goals.

Appropriations:

(a)	Personal services and				
	employee benefits	3,306.5	341.8	7,799.6	11,447.9
(b)	Contractual services	348.7		377.3	726.0
(c)	Other	2,140.0	2,456.2	4,596.2	

Authorized FTE: 206.00 Permanent

Performance measures:

- (a) Quality: Percent of federal financial reporting completed on time and accurately 90%
- (b) Outcome: Percent of department of finance and administration adjusted journal entries submitted fifteen days or less after completion of reconciliation 85%
- (c) Outcome: Percent of reconciliations completed within thirty to forty-five days after receipt of accurate monthly reports from department of finance and administration, joint

accounting system or state treasurer's office 85%

- (d) Outcome: Average time to process a payment voucher 4 days
- (e) Outcome: Average time to process a purchase request document 4 days
- (f) Outcome: Percent of audit findings resolved 85%
- (g) Outcome: Number of audit findings in unqualified opinions issued <2
- (h) Quality: Percent of state and federal financial reporting completed
on time and accurately 90%

Subtotal 2,563,764.6

LABOR DEPARTMENT:

(1) Operations:

The purpose of the operations program is to provide unemployment insurance, workforce development and labor market services that meet the needs of job seekers and employers.

Appropriations:

- (a) Personal services and
employee benefits 20,047.5 20,047.5
- (b) Contractual services 1,228.3 1,228.3
- (c) Other 3,567.3 7,958.1 11,525.4
- (d) Other financing uses 29.7 29.7

Authorized FTE: 429.00 Permanent; 32.00 Term; 2.00 Temporary

Performance measures:

- (a) Outcome: Percent of adults receiving workforce development services
who have entered employment within one quarter of leaving
the program 70%
- (b) Outcome: Percent of dislocated workers receiving workforce
development services who have entered employment within one
quarter of leaving the program 74%
- (c) Outcome: Number of individuals served by labor market services who

found employment 50,000

(d) Outcome: Percent of status determinations for newly established
employers made within ninety days of the quarter end 70%

(e) Explanatory: Number of persons served by the labor market services
program 158,000

(2) Compliance:

The purpose of the compliance program is to monitor and evaluate compliance with labor law, including those concerning nonpayment of wages, unlawful discrimination, child labor, apprentices and wage rates for public works projects.

Appropriations:

(a)	Personal services and				
	employee benefits	853.4	847.0	84.3	1,784.7
(b)	Contractual services	5.6			5.6
(c)	Other	223.2	193.9	200.0	617.1
(d)	Other financing uses	2.5			2.5

Authorized FTE: 39.00 Permanent; 1.00 Temporary

Performance measures:

(a) Output: Number of targeted public works inspections completed 1,610

(b) Output: Annual collections of apprentice contributions for public
works projects \$110,000

(c) Outcome: Percent of wage claims investigated and resolved within one
hundred twenty days 80%

(d) Efficiency: Number of backlogged human rights commission hearings
pending 25

(e) Efficiency: Percent of discrimination cases settled through alternative
dispute resolution 30%

(f) Efficiency: Average number of days for completion of discrimination
investigations and determinations 147

(3) Information:

The purpose of the information program is to disseminate labor market information measuring employment, unemployment, economic health and the supply of and demand for labor.

Appropriations:

(a)	Personal services and employee benefits			1,068.4	1,068.4
(b)	Contractual services			23.4	23.4
(c)	Other	230.0	230.0		
(d)	Other financing uses			1.3	1.3

Authorized FTE: 19.00 Permanent; 1.00 Term

(4) Workforce Investment Act local fund:

Appropriations:

(a)	Other	17,936.8		17,936.8	
(b)	Other financing uses			4,565.4	4,565.4

(5) Program support:

The purpose of program support is to provide overall leadership, direction and administrative support to each agency program to achieve their programmatic goals.

Appropriations:

(a)	Personal services and employee benefits	646.2	601.1	5,953.7	7,201.0
(b)	Contractual services			2,676.7	2,676.7
(c)	Other	398.1	3,636.1	4,034.2	
(d)	Other financing uses			8.4	8.4

Authorized FTE: 121.00 Permanent; 7.00 Term; 3.30 Temporary

Included in the federal funds amount is six million two hundred thirty-six thousand seven hundred dollars (\$6,236,700) of federal Reed Act and federal Economic Security and Recovery Act of 2001 funds from federal fiscal year 2002 for expenditure in state fiscal years 2003, 2004, 2005 and 2006.

Subtotal 72,986.4

WORKERS' COMPENSATION ADMINISTRATION:

The purpose of the workers' compensation administration program is to arbitrate and administer the workers' compensation system to maintain a balance between workers' prompt receipt of statutory benefits and reasonable costs for employers.

Appropriations:

(a)	Personal services and		
	employee benefits	6,607.3	6,607.3
(b)	Contractual services	600.0	600.0
(c)	Other	1,129.5	1,129.5

Authorized FTE: 129.00 Permanent

Performance measures:

(a) Outcome:	Percent of formal claims resolved without trial	87%
(b) Output:	Number of first reports of injury processed	39,750
(c) Output:	Number of complaints of uninsured employers investigated and resolved	3,750

Subtotal 8,336.8

DIVISION OF VOCATIONAL REHABILITATION:

(1) Rehabilitation services:

The purpose of the rehabilitation services program is to promote opportunities for people with disabilities to become more independent and productive by empowering individuals with disabilities so that they may maximize their employment, economic self-sufficiency, independence and inclusion and integration into society.

Appropriations:

(a)	Personal services and				
	employee benefits	1,845.3	152.1	7,854.3	9,851.7
(b)	Contractual services	147.9	60.5	823.3	1,031.7
(c)	Other	3,283.5	375.0	187.6	13,991.3
					17,837.4
(d)	Other financing uses	1.2	31.4	77.5	110.1

Authorized FTE: 184.00 Permanent; 26.00 Term

Performance measures:

(a) Output:	Number of persons achieving suitable employment for a
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minimum of ninety days 1,695

(b) Output: Number of independent living plans developed 355

(c) Output: Number of individuals served for independent living 558

(2) Disability determination:

The purpose of the disability determination program is to produce accurate and timely eligibility determinations to social security disability applicants so they may receive benefits.

Appropriations:

(a)	Personal services and			
	employee benefits		4,656.4	4,656.4
(b)	Contractual services		153.0	153.0
(c)	Other	5,632.2	5,632.2	

Authorized FTE: 97.00 Permanent

The division of vocational rehabilitation may apply an indirect cost rate of up to five percent for administering and monitoring independent living projects.

Any unexpended or unencumbered balances in the division of vocational rehabilitation remaining at the end of fiscal year 2004 from appropriations made from the general fund shall not revert.

Subtotal 39,272.5

GOVERNOR'S COMMITTEE ON CONCERNS OF THE HANDICAPPED:

(1) Information and advocacy service:

The purpose of the information and advocacy service program is to provide needed information on disability case law analysis, building code comparisons, awareness of technologies, dispelling of stereotypes, training on the legislative process and population estimates to New Mexico individuals with disabilities and decision makers so they can improve the economic, health and social status of New Mexico individuals with disabilities.

Appropriations:

(a)	Personal services and			
	employee benefits	412.5	17.4	429.9
(b)	Contractual services	37.4		37.4
(c)	Other	77.7	151.6	229.3

Authorized FTE: 7.50 Permanent; .50 Term

Performance measures:

(a) Output: Number of persons seeking technical assistance on
 disability issues 4,350

(b) Output: Number of architectural plans reviewed or sites inspected 200

Subtotal 696.6

DEVELOPMENTAL DISABILITIES PLANNING COUNCIL:

(1) Developmental disabilities planning council:

The purpose of the developmental disabilities planning council program is to provide and produce opportunities to and for persons with disabilities so they may realize their dreams and potential and become integrated members of society.

Appropriations:

(a)	Personal services and				
	employee benefits	237.0	100.5	337.5	
(b)	Contractual services	26.1	4.7	30.8	
(c)	Other	34.0	30.0	384.2	448.2
(d)	Other financing uses	.2			.2

Authorized FTE: 6.50 Permanent

Performance measures:

(a) Output: Number of persons with developmental disabilities served by
 the agency in federally-mandated areas 7,500

(b) Output: Number of monitoring site visits conducted 32

(c) Output: Number of project, programmatic and financial reports
 reviewed to assure compliance with state and federal
 regulations 44

(2) Brain injury advisory council:

The purpose of the brain injury advisory council program is to provide guidance on the utilization and implementation of programs provided through the department of health's brain injury services fund so they may align service delivery with the needs as identified by the brain injury community.

Appropriations:

(a) Personal services and

	employee benefits	51.7		51.7
(b)	Contractual services	3.5		3.5
(c)	Other	50.2	50.2	
(d)	Other financing uses	.1		.1

Authorized FTE: 1.00 Permanent

Performance measures:

- (a) Outcome: Percent of individuals receiving education or training on traumatic brain injury issues who demonstrate increased knowledge with a minimum score of seventy percent or better or a thirty percent increase on post-training tests 60%

Subtotal 922.2

MINERS' HOSPITAL OF NEW MEXICO:

(1) Healthcare:

The purpose of the healthcare program is to provide quality acute care, long-term care and related health services to the beneficiaries of the miners' trust fund of New Mexico and the people of the region so they can maintain optimal health and quality of life.

Appropriations:

(a)	Personal services and			
	employee benefits	8,748.8	129.3	8,878.1
(b)	Contractual services	1,809.9	95.4	1,905.3
(c)	Other	3,855.0	35.0	3,890.0
(d)	Other financing uses		4,297.6	4,297.6

Authorized FTE: 211.50 Permanent; 13.50 Term

Performance measures:

- (a) Outcome: The long-term care facility will work to acquire accreditation by the joint commission on accreditation of healthcare organizations Work on

(b) Output: Number of outpatient visits 18,000

(c) Output:	Number of outreach clinics conducted	24
(d) Output:	Number of emergency room visits	5,000
(e) Output:	Number of patient days at the acute care facility	6,300
(f) Output:	Number of patient days at the long-term care facility	9,500
Subtotal		18,971.0

DEPARTMENT OF HEALTH:

(1) Prevention, health promotion and early intervention:

The purpose of the prevention, health promotion and early intervention program is to provide a statewide system of health promotion, disease and injury prevention, community health improvement and other public health services, including locally available safety net clinical services, for the people of New Mexico so the health of the public is protected and improved.

Appropriations:

(a)	Personal services and				
	employee benefits	19,935.3	443.5	20,745.3	41,124.1
(b)	Contractual services	32,810.2	8,958.4	8,885.7	50,654.3
(c)	Other	11,487.2	6,517.5	2,556.5	37,078.7
					57,639.9
(d)	Other financing uses	299.7			299.7

Authorized FTE: 354.50 Permanent; 601.50 Term

The general fund appropriation to the prevention, health promotion and early intervention program of the department of health in the contractual services category includes: six million dollars (\$6,000,000) for smoking prevention and cessation programs, including one million dollars (\$1,000,000) for the continuation of the department of health statewide smart moves youth smoking cessation program; one million dollars (\$1,000,000) for juvenile and adult diabetes prevention and control services; and four hundred seventy thousand dollars (\$470,000) for HIV/AIDS prevention, services and medicine.

The general fund appropriation to the maternal and child health activity in the prevention, health promotion and early intervention program of the department of health shall be expended for coordination, planning and assessment in lieu of direct services available through other federal or state programs.

The general fund appropriation to the prevention, health promotion and early intervention program of the department of health in the other category includes one hundred thousand dollars (\$100,000) for a statewide education program for prostate cancer, including at least thirty thousand dollars (\$30,000) for programs in Dona Ana, Grant and Luna counties.

Performance measures:

- (a) Output: Number of children ages zero to four with or at risk for developmental disabilities receiving families, infants and

toddler early intervention services 7,050

- (b) Output: Number of women and children served by the families first prenatal case management program 5,400
- (c) Outcome: Percent of families who report, as an outcome of receiving early intervention services, an increased capacity to address their child's special needs 90%
- (d) Outcome: Percent of New Mexico children whose immunizations are up-to-date through age two (thirty-five months) 75%
- (e) Output: Number of adolescents ages fifteen to seventeen receiving agency-funded family planning services 8,500
- (f) Outcome: Teenage birth rate per one thousand population for females ages fifteen through seventeen compared to the national average <36.9
- (g) Outcome: Percent of high-risk youth participants completing extensive agency substance abuse prevention programming who report using tobacco in the past thirty days compared to a similar group of nonparticipants 18%:26%
- (h) Outcome: Percent of high-risk youth participants completing extensive agency substance abuse prevention programming who report using alcohol in the past thirty days compared to a similar group of nonparticipants 31%:45%
- (i) Output: Number of disease prevention educational encounters with people at high risk for HIV infection and hepatitis viral infection, including injection drug users 40,000
- (j) Output: Percent of people with diabetes who have seen a healthcare provider in the past year 92%
- (k) Outcome: Percent of high-risk youth participants completing

extensive agency substance abuse prevention programming who
 report using marijuana in the past thirty days compared to
 a similar group of nonparticipants 20%:29%

(l) Outcome: Percent of pre-kindergarten to sixth-grade youth showing a
 reduction in severity of conduct problems after receiving
 agency substance abuse prevention services 10%

(m) Output: Number of youth provided agency-funded substance abuse
 prevention programming, including youth receiving
 short-term programming 49,180

(n) Output: Number of high-risk youth receiving extensive agency-funded
 substance abuse prevention programming throughout the
 school year 9,200

(2) Public health infrastructure and health systems capacity and improvement:

The purpose of the public health infrastructure and health systems capacity and improvement program is to maintain and enhance a statewide public health infrastructure and the inter-related systems of district and local public health, primary care, rural health, emergency medical services and quality management so the people of New Mexico can be assured of population-based surveillance, timely response to emergencies and threats to the public health, access to basic health services and high quality health systems.

Appropriations:

(a)	Personal services and					
	employee benefits	13,175.6	1,995.0	1,793.7	3,042.4	20,006.7
(b)	Contractual services	8,685.1	3,454.0	1,966.1	8,517.5	22,622.7
(c)	Other	5,409.4	837.4	1,207.9	2,850.7	10,305.4
(d)	Other financing uses	2.1				2.1

Authorized FTE: 205.00 Permanent; 209.00 Term

The other state funds appropriation to the public health infrastructure and health systems capacity and improvement program of the department of health in the contractual services category includes an additional one million five hundred thousand dollars (\$1,500,000) from prior years unexpended balances in the county-

supported medicaid fund for the purpose of supporting the Rural Primary Health Care Act.

The other state funds appropriation to the public health infrastructure and health systems capacity and improvement program of the department of health in the other category includes one hundred twenty five thousand dollars (\$125,000) to pay for the continuation of the receivership operation of the los amigos nursing home in Santa Rosa.

Performance measures:

- (a) Outcome: Number of long-term services, developmental disabilities waiver, supported living and day habilitation providers receiving unannounced on-site health and safety reviews 24
- (b) Outcome: Number of oversight reviews and technical assistance visits conducted for behavioral health services regional care coordinator providers 15
- (c) Efficiency: Percent of community-based program complaint investigations completed by the division of health improvement incident management system within forty-five days 90%
- (d) Efficiency: Percent of inquiries and incidents regarding urgent threats to public health that result in initiation of a follow-up investigation and/or control activities by the office of epidemiology within thirty minutes of initial notification 95%
- (e) Outcome: Percent of individuals living in rural areas served by a comprehensive emergency medical services response within fifteen minutes 78%
- (f) Output: Number of law enforcement officers trained and certified to conduct forensically defensible breath and alcohol analyses 1,400
- (g) Output: Percent of primary care centers reporting performance data on clinical indicators in the contract year 75%

(3) Behavioral health treatment:

The purpose of the behavioral health treatment program is to provide an effective, accessible, regionally coordinated and integrated continuum of behavioral health treatment services that are consumer-driven and provided in the least restrictive setting for eligible persons in New Mexico so they may become stabilized and their functioning levels may improve.

Appropriations:

(a)	Personal services and						
	employee benefits	34,859.8		398.7	5,117.7	40,376.2	
(b)	Contractual services	36,927.9	5,414.8	894.4	3,078.4	46,315.5	
(c)	Other	817.5	257.2	3,795.6	511.9	5,382.2	
(d)	Other financing uses	2.3				2.3	

Authorized FTE: 871.00 Permanent; 102.00 Term

The general fund appropriation to the behavioral health treatment program of the department of health in the contractual services category includes twenty-five thousand dollars (\$25,000) to develop a statewide suicide prevention strategy and training program for adults and students who have contact with students with a high risk of suicide.

Performance measures:

- (a) Efficiency: Percent of eligible adults with urgent behavioral health treatment needs who have a first face-to-face meeting with a community-based behavioral health professional within twenty-four hours of request for services 86%
- (b) Efficiency: Percent of eligible adults with routine behavioral health treatment needs who have a first face-to-face meeting with a community-based behavioral health professional within ten business days of request for services 85%
- (c) Outcome: Percent of adults served in community-based behavioral health programs who indicate an improvement in the quality of their lives and increased independent functioning in their community as a result of their treatment experience 80%
- (d) Outcome: Percent of adults receiving community-based substance abuse services who experience diminishing severity of problems after treatment 80%
- (e) Outcome: Las Vegas medical center re-admission rate per one thousand admissions within thirty days compared to the national

average 2.7

(f) Efficiency: Percent of adults registered in regional care coordination

plans discharged from psychiatric inpatient care who

receive follow-up care within seven days 83%

(g) Output: Number of active clients provided agency substance abuse

treatment services during the fiscal year 11,100

(h) Output: Number of detoxification and residential bed days provided

to agency substance abuse clients during the fiscal year 49,910

(i) Output: Number of outpatient service hours provided to agency

substance abuse clients during the fiscal year 215,656

(j) Output: Number of agency clients receiving mental health and

substance abuse integrated treatment services in accordance

with best practices for co-occurring disorders 4,000

(4) Long-term care:

The purpose of the long-term care program is to provide an effective, efficient and accessible system of regionally based long-term care services for eligible New Mexicans so their quality of life and independence can be maximized.

Appropriations:

(a) Personal services and

employee benefits 16,394.2 2,843.5 31,405.0 1,229.0 51,871.7

(b) Contractual services 9,057.1 6,626.6 3,930.7 1,522.3 21,136.7

(c) Other 2,387.6 1,229.8 7,705.9 278.4 11,601.7

(d) Other financing uses 45,678.9 3,500.0 49,178.9

Authorized FTE: 1,011.00 Permanent; 386.50 Term; 15.00 Temporary

The general fund appropriation to the long-term care program of the department of health in the other financing uses category includes five hundred thousand dollars (\$500,000) to leverage two million dollars (\$2,000,000) of Rural Primary Healthcare Act funds within the human services department contingent on approval and implementation of an alternative prospective payment system to reimburse federally qualified health centers for services to medicaid and salud patients that more effectively protects the federal qualified health centers safety net providers from the effects of medical inflation and approval and implementation of a methodology by the human services department to reimburse federally qualified health centers for the salaries and overhead costs for medicaid outstationed eligibility workers employed at federally qualified health centers.

The general fund appropriation to the long-term care program of the department of health in the personal services and employee benefits category includes one hundred thousand dollars (\$100,000) to provide continuing support for public education and advocacy training for traumatic brain injury.

The general fund appropriation to the long-term care program of the department of health in the contractual services category includes five hundred thousand dollars (\$500,000) to reduce the developmental disabilities waiting list.

The general fund appropriation to the long-term care program of the department of health in the contractual services category includes one million four hundred thousand dollars (\$1,400,000) to reduce the developmental disabilities waiting list. The appropriation is contingent on enactment of Senate Bill 162 or similar legislation of the first session of the forty-sixth legislature.

Performance measures:

- (a) Quality: Rate per one hundred patients of abuse, neglect and exploitation allegations in agency-funded facilities and community-based long-term care services programs <8
- (b) Explanatory: Percent of individuals participating in long-term services division programs who report services help them maintain or increase independence in areas such as daily living skills, work and functional skills 75%
- (c) Quality: Percent of community long-term services contractors' direct contact staff who leave employment annually 44.2%
- (d) Quality: Fort Bayard medical center long-term care facility will work to acquire accreditation by the joint commission on accreditation of healthcare organizations Acquire
- (e) Outcome: Number of customers or registrants requesting and actively waiting for admission to the developmental disabilities medicaid waiver program on the measurement date 2,400
- (f) Output: Number of crisis referrals for individuals with developmental disabilities that are addressed by the Los Lunas community program crisis network 80
- (5) Administration:

The purpose of the administration program is to provide leadership, policy development and business support functions to the agency's divisions, facilities and employees so they may achieve the goals and objectives of the department of health.

Appropriations:

(a)	Personal services and				
	employee benefits	5,649.6	153.5	1,913.7	7,716.8
(b)	Contractual services	334.2		415.3	749.5
(c)	Other	586.5	744.7	477.9	1,809.1
(d)	Other financing uses	.2			.2

Authorized FTE: 135.50 Permanent; 13.30 Term

Four million five hundred thousand dollars (\$4,500,000) of the general fund appropriations made to the department of health in Subsection F of Section 4 of Chapter 4 of Laws 2002 (1st E.S.) shall not revert at the end of fiscal year 2003 and is re-appropriated from other state funds to the medicaid waivers activity of the long-term care and prevention, health promotion and early intervention programs of the department of health for expenditure in fiscal year 2004.

Performance measures:

- (a) Efficiency: Percent of warrants issued within thirty days from the date
of acceptance of invoices by agency divisions and facilities 93%

Subtotal 438,795.7

DEPARTMENT OF ENVIRONMENT:

(1) Air quality:

The purpose of the air quality program is to monitor and regulate impacts to New Mexico's air quality to protect public and environmental health.

Appropriations:

(a)	Personal services and				
	employee benefits	334.8	2,864.2	780.6	3,979.6
(b)	Contractual services	18.2	155.7	42.4	216.3
(c)	Other	109.3	936.0	254.6	1,299.9
(d)	Other financing uses	17.9	153.5	41.7	213.1

Authorized FTE: 23.00 Permanent; 57.00 Term

Performance measures:

- (a) Efficiency: Percent of statutorily allowed construction permit decisions within the first ninety days 90%
- (b) Efficiency: Percent of portable source relocation applications processed within fifteen days 100%
- (c) Output: Number of human-caused violations of the health-based national ambient air quality standards monitored throughout the state 40
- (d) Outcome: Percent reduction of inspected aggregate facilities with repeat emissions violations 10%
- (e) Output: Percent change of the ambient air concentration in relation to the state and federal ambient air quality standards <5%

(2) Water quality:

The purpose of the water quality program is to monitor and regulate impacts to New Mexico's ground and surface water for all users to ensure public and watershed health.

Appropriations:

(a)	Personal services and employee benefits	2,499.7	423.3	3,546.2	6,469.2
(b)	Contractual services	250.9	226.8	2,999.8	3,477.5
(c)	Other	344.2	81.1	818.4	1,243.7
(d)	Other financing uses	31.8	7.6	75.9	115.3

Authorized FTE: 45.00 Permanent; 88.00 Term

Performance measures:

- (a) Outcome: Percent of impaired total stream miles restored to beneficial uses 5%
- (b) Outcome: Percent of permitted facilities that have not polluted ground water 70%
- (c) Efficiency: Percent of public drinking water systems inspected within

one week of notification of system problems that may impact

public health 80%

(d) Efficiency: Percent of groundwater pollution prevention permits renewed

that have been expired for at least one year 35%

(e) Outcome: Percent of impaired surface water watersheds monitored,

certified, and funded for remediation 2%

(f) Efficiency: Completed percent of drinking water chemical sampling

within regulatory timeframes 75%

(3) Resource conservation and recovery:

The purpose of the resource conservation and recovery program is to monitor, regulate and remediate impacts to New Mexico's soil and ground water in order to protect public and wildlife health and safety.

Appropriations:

(a)	Personal services and				
	employee benefits	1,472.8	3,277.4	2,699.2	7,449.4
(b)	Contractual services	215.3	479.3	394.5	1,089.1
(c)	Other	348.9	776.7	639.3	1,764.9
(d)	Other financing uses	45.1	100.5	82.7	228.3

Authorized FTE: 32.00 Permanent; 112.50 Term

Performance measures:

(a) Outcome: Percent of landfills meeting groundwater monitoring

requirements 92%

(b) Outcome: Percent of confirmed underground storage tank release sites

undergoing assessment or corrective action 43%

(c) Efficiency: Percent of hazardous waste generator inspections completed 7%

(4) Environmental and occupational health, safety and oversight:

The purpose of the environmental and occupational health, safety and oversight program is to ensure the highest possible level of public, community and workplace safety and health for communities, residents, workers and businesses.

Appropriations:

(a)	Personal services and				
	employee benefits	5,056.9	1,407.7	2,874.0	9,338.6
(b)	Contractual services	34.3	2,077.1	894.6	3,006.0
(c)	Other	1,295.8	828.5	834.5	2,958.8
(d)	Other financing uses	10.6	53.6	10.8	75.0

Authorized FTE: 126.00 Permanent; 70.00 Term

Performance measures:

- (a) Outcome: Percent reduction in the injury and illness rate in selected industries by the end of the fiscal year 3%
- (b) Efficiency: Percent of new septic tank inspections completed 70%
- (c) Efficiency: Percent of establishments determined to pose high risk to public health that receive additional inspections 100%

(5) Program support:

The purpose of program support is to provide overall leadership, administrative, legal and information management support to allow programs to operate in the most knowledgeable, efficient and cost-effective manner so the public can receive the information it needs to hold the department accountable.

Appropriations:

(a)	Personal services and				
	employee benefits	1,578.4	1,820.9	1,423.9	4,823.2
(b)	Contractual services	159.9	184.5	144.3	488.7
(c)	Other	349.3	403.3	315.2	1,067.8

Authorized FTE: 55.00 Permanent; 32.00 Term

Performance measures:

- (a) Output: Percent of prior year significant audit findings resolved 95%
- (b) Quality: Average favorable percent rating on annual program support customer satisfaction survey 75%

(6) Special revenue funds:

Appropriations:

(a)	Radioactive material license			
	fund	331.9		
		331.9		
(b)	Liquid waste fund	619.8		619.8
(c)	Tire recycling fund	14.0		14.0
(d)	Air quality Title V fund	3,179.0		3,179.0
(e)	Responsible party prepay	529.6		529.6
(f)	Hazardous waste fund	2,273.7		2,273.7
(g)	Water quality management			
	fund	258.2	258.2	
(h)	Water conservation fund	3,102.8		3,102.8
(i)	Air quality permit fund	1,357.3		1,357.3
(j)	Miscellaneous revenue	64.6		64.6
(k)	Radiologic technology fund		96.7	96.7
(l)	Underground storage tank			
	fund	678.0	678.0	
(m)	Corrective action fund	20,582.3		20,582.3
(n)	Food service sanitation fund		662.7	662.7
	Subtotal		83,055.0	

OFFICE OF THE NATURAL RESOURCES TRUSTEE:

(1) Natural resource damage assessment and restoration:

The purpose of the natural resource damage assessment and restoration program is to restore or replace natural resources or resource services injured or lost due to releases of hazardous substances or oil into the environment.

Appropriations:

(a)	Personal services and			
	employee benefits	177.8	126.0	303.8

(b)	Contractual services	18.5		18.5
(c)	Other	41.2	41.2	
(d)	Other financing uses	.3		.3

Authorized FTE: 3.70 Permanent

Performance measures:

(a) Outcome:	Dollar amount of settlements for fiscal year 2004	500,000		
(b) Outcome:	Number of acres restored for fiscal year 2004	400		
(c) Outcome:	Percent of sites identified and status updated	50%		
(d) Output:	Number of sites to be identified and status updated	18		
(e) Outcome:	Percent of sites with assessment for natural resources damage in progress or completed	50%		
(f) Output:	Number of sites assessed for natural resource damages	6		
(g) Outcome:	Percent of cases settled and restorations planned, in progress or completed	50%		
(h) Output:	Number of cases to be settled and restorations planned, in progress or completed	5		

Subtotal 363.8

NEW MEXICO HEALTH POLICY COMMISSION:

(1) Health information and policy analysis:

The purpose of the health information and policy analysis program is to provide relevant and current health-related data, information and comprehensive analysis to consumers, state health agencies, the legislature and the private health sector so they can obtain or provide improved healthcare access in New Mexico.

Appropriations:

(a)	Personal services and employee benefits	737.3		737.3
(b)	Contractual services	371.3	1.0	372.3
(c)	Other	273.8	273.8	

Authorized FTE: 17.00 Permanent

Performance measures:

(a) Output: Number of health-related bills analyzed during the legislative session 100

(b) Output: Number of customized or specialized health data analyses performed in response to requests for information or in anticipation of issues affecting the healthcare delivery and finance systems 10

Subtotal 1,383.4

NEW MEXICO VETERANS' SERVICE COMMISSION:

(1) Veterans' services:

The purpose of the veterans' services program is to provide information and assistance to veterans and their eligible dependents to obtain the benefits to which they are entitled in order to improve their quality of life.

Appropriations:

(a)	Personal services and employee benefits	1,143.9	110.3	1,254.2		
(b)	Contractual services	954.2		954.2		
(c)	Other	221.9	18.5	23.0	37.3	300.7

Authorized FTE: 29.00 Permanent; 2.00 Term

~~[The general fund appropriation to the veterans' services program of the New Mexico veterans' service commission in the contractual services category includes six hundred thousand dollars (\$600,000) for assistance to veterans with lung disease.] [LINE-ITEM VETO]~~

The general fund appropriation to the veterans' service program of the New Mexico veterans' service commission in the contractual services category is contingent on the commission including performance measures in its contracts to increase contract oversight and accountability.

Performance measures:

(a) Output: Number of veterans served by commission field offices 25,000

(b) Output: Number of referrals from veteran service officers to contract veterans' organizations 14,500

(c) Output: Number of homeless veterans provided shelter for a period of two weeks or more 40

Subtotal 2,509.1

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

(1) Juvenile justice:

The purpose of the juvenile justice program is to provide rehabilitative services to youth committed to the department including but not limited to medical, educational, mental health and other services.

Appropriations:

(a)	Personal services and				
	employee benefits	35,597.2	1,653.7	4.5	37,255.4
(b)	Contractual services	11,170.6			11,170.6
(c)	Other	5,975.4	627.6	666.4	7,269.4

Authorized FTE: 828.00 Permanent; 30.30 Term; 6.00 Temporary

The juvenile justice program of the children, youth and families department shall transfer fifty thousand dollars (\$50,000) to the general services department for the maintenance of the Fort Stanton facility.

Performance measures:

(a) Outcome:	Average improvement in educational grade level of clients	1.5
(b) Outcome:	Percent of re-adjudicated clients	3.5%
(c) Outcome:	Percent of clients recommitted to a state juvenile or adult correctional facility in New Mexico	10%
(d) Output:	Percent of clients who complete formal probation	80%
(e) Output:	Percent of eligible clients receiving a high school diploma in agency facilities	27.5%

(2) Child and adult protective services:

The purpose of the child and adult protective services program is to receive and investigate referrals of child and adult abuse and neglect and provide family preservation, treatment and legal services to vulnerable children and adults and their families to ensure their safety and well-being.

Appropriations:

(a)	Personal services and				
	employee benefits	24,193.8	8,952.1	10,390.3	43,536.2
(b)	Contractual services	1,628.3	7,946.3	9,574.6	

(c)	Other	14,594.7	1,259.5	1,070.6	19,970.6	36,895.4
(d)	Other financing uses				208.0	208.0

Authorized FTE: 916.70 Permanent; 6.00 Term; 2.00 Temporary

The general fund appropriation to the child and adult protective services program of the children, youth and families department in the contractual services category includes sufficient funding to continue adult day care, adult attendant care and adult protective services.

Performance measures:

- (a) Outcome: Percent of children with repeat maltreatment 7.5%
- (b) Outcome: Percent of children in foster care for twelve months with no more than two placements 86.7%
- (c) Output: Number of children in foster care for twelve months with no more than two placements 2,385
- (d) Outcome: Percent of children adopted in less than twenty-four months from entry into foster care 32%
- (e) Outcome: Percent of adults with repeat maltreatment 12%

(3) Prevention and intervention:

The purpose of the prevention and intervention program is to provide behavioral health, quality child-care and nutrition services to children so they can enhance their physical, social and emotional growth and development and can access quality care.

Appropriations:

(a)	Personal services and employee benefits	7,188.4	293.5	1,704.6	9,186.5	
(b)	Contractual services	17,731.4	246.0	8,202.1	26,179.5	
(c)	Other	10,749.0	900.0	34,752.5	77,045.3	123,446.8
(d)	Other financing uses	327.5		1,250.0	1,577.5	

Authorized FTE: 152.30 Permanent; 38.00 Term

The general fund appropriation to the prevention and intervention program of the children, youth and families department in contractual services includes two million dollars (\$2,000,000) for the maintenance-of-effort for temporary assistance for needy families block grant, of which at least twenty-five percent shall be used to contract or collaborate with private and nonprofit childcare providers to provide head start and related childcare services.

Performance measures:

(a) Outcome: Percent of children in families receiving behavioral health

services who experience an improved level of functioning at

discharge 55%

(b) Output: Percent of slots utilizing nontraditional childcare 31%

(c) Output: Number of slots utilizing nontraditional childcare 7,378

(4) Program support:

The purpose of program support is to provide the direct services programs with functional and administrative support so they may provide client services consistent with the department's mission and also support the development and professionalism of employees.

Appropriations:

(a) Personal services and

employee benefits 5,754.4 745.5 2,441.0 8,940.9

(b) Contractual services 1,200.8 125.5 339.0 1,665.3

(c) Other 1,411.5 378.6 1,074.5 2,864.6

Authorized FTE: 156.00 Permanent

Performance measures:

(a) Output: Turnover rate for social workers 11.9%

(b) Output: Turnover rate for juvenile correctional officers 18.4%

(c) Quality: Percent of employee files that contain performance appraisal development plans completed and submitted within state personnel guidelines 95%

Subtotal 319,770.7

TOTAL HEALTH, HOSPITALS AND HUMAN 903,847.6 143,441.2 205,787.7
2,342,777.9 3,595,854.4

SERVICES

G. PUBLIC SAFETY

DEPARTMENT OF MILITARY AFFAIRS:

(1) National guard support:

The purpose of the national guard support program is to provide administrative, fiscal, personnel, facility construction and maintenance support to the New Mexico national guard military and civilian activities so they can maintain a high degree of readiness to respond to state and federal missions.

Appropriations:

(a)	Personal services and			
	employee benefits	1,796.2	1,696.2	3,492.4
(b)	Contractual services	18.0	796.0	814.0
(c)	Other	1,902.9 49.4	1,366.3	3,318.6

Authorized FTE: 31.00 Permanent; 46.00 Term

The general fund appropriation to the national guard support program of the department of military affairs in the personal services and employee benefits category includes funding for the adjutant general position not to exceed range thirty-five in the governor's exempt salaries plan and funding for the deputy adjutant general position not to exceed range thirty-two in the policies for governor's exempts.

The general fund appropriation to the national guard support program of the department of military affairs in the other category includes ten thousand dollars (\$10,000) for expenditure for the employee support of the guard and reserve program.

Performance measures:

- (a) Outcome: Percent of strength of the New Mexico national guard 86%
- (b) Outcome: Rate of attrition of the New Mexico Army national guard 15%
- (c) Output: Number of major environmental compliance findings from inspections 37

(2) Crisis response:

The purpose of the crisis response program is to provide resources and a highly trained and experienced force to protect the public and improve the quality of life for New Mexicans.

Appropriations:

(a)	Personal services and			
	employee benefits	692.5	977.4	1,669.9
(b)	Contractual services	232.0	348.0	580.0
(c)	Other	301.0	353.0	654.0

Authorized FTE: 1.00 Permanent; 39.00 Term

Performance measures:

(a) Outcome: Percent of cadets successfully graduating from the youth

challenge academy 75%

Subtotal 10,528.9

PAROLE BOARD:

(1) Adult parole:

The purpose of the adult parole program is to provide and or establish parole conditions and guidelines for inmates and parolees so they may reintegrate back into the community as law-abiding citizens.

Appropriations:

(a)	Personal services and		
	employee benefits	249.8	249.8
(b)	Contractual services	6.2	6.2
(c)	Other	92.6	92.6

Authorized FTE: 5.00 Permanent

Performance measures:

(a) Efficiency: Percent of initial parole hearings held a minimum of thirty

days prior to the inmate's projected release date 70%

Subtotal 348.6

JUVENILE PAROLE BOARD:

(1) Juvenile parole:

The purpose of the juvenile parole program is to provide fair and impartial hearings through reviews of incarcerated youth so they can reintegrate into society as law-

abiding citizens.

Appropriations:

(a)	Personal services and		
	employee benefits	297.1	297.1
(b)	Contractual services	5.7	5.7
(c)	Other	45.4	45.4

Authorized FTE: 6.00 Permanent

(c) Output: Percent of inmates testing positive in monthly drug test <=5%

(d) Output: Graduation rate of correctional officer cadets from the
corrections department training academy 78%

(e) Output: Number of cadets entering corrections department training
academy 221

(2) Inmate programming:

The purpose of the inmate programming program is to provide motivated inmates the opportunity to participate in appropriate programs and services so they have less propensity toward inmate violence while incarcerated and the opportunity to acquire living skills and links to community support systems that can assist them on release.

Appropriations:

(a)	Personal services and				
	employee benefits	6,326.2	907.7	7,233.9	
(b)	Contractual services	284.0		284.0	
(c)	Other	2,021.2	258.6	17.5	2,297.3

Authorized FTE: 126.50 Permanent; 18.50 Term

The general fund appropriations to the inmate programming program of the corrections department include one million five hundred thousand dollars (\$1,500,000) to provide residential treatment, mental health, substance abuse and parenting services for women under the supervision of the probation and parole division and their children as appropriate.

Performance measures:

(a) Output: Number of inmates offered corrective thinking,
employability, literacy and transferability skills 700

(b) Output: Number of inmates who successfully complete the general
equivalency diploma 150

(c) Output: Number of inmates enrolled in adult basic education 1,650

(d) Output: Percent of reception diagnostic center intake inmates who
receive substance abuse screening 99%

(e) Output: Number of eligible inmates accepted into the individual
success plan phase of the success for offenders after
release program 300

(f) Outcome: Percent of individuals in the success for offenders after
release program who complete the program 80%

(3) Corrections industries:

The purpose of the corrections industries program is to provide training and work experience opportunities for inmates in order to instill a quality work ethic and prepare them to perform effectively in an employment position and to reduce idle time of inmates while in prison.

Appropriations:

(a)	Personal services and			
	employee benefits	1,857.1		1,857.1
(b)	Contractual services	20.5		20.5
(c)	Other	3,854.1	3,854.1	
(d)	Other financing uses	100.0		100.0

Authorized FTE: 33.00 Permanent; 4.00 Term

Performance measures:

(a) Outcome: Profit/loss ratio Break Even
(b) Outcome: Percent of eligible inmates employed 5.92%

(4) Community offender management:

The purpose of the community offender management program is to provide programming and supervision to offenders on probation and parole with increased emphasis on high-

risk offenders to better ensure the probability of them becoming law-abiding citizens to protect the public from undue risk and to provide intermediate sanctions and post-

incarceration support services as a cost-effective alternative to incarceration.

Appropriations:

(a)	Personal services and			
	employee benefits	12,200.7	968.7	13,169.4
(b)	Contractual services	90.6		90.6
(c)	Other	5,602.8	5,602.8	

Authorized FTE: 321.00 Permanent

The general fund appropriations to the community offender management program of the corrections department include five hundred thousand dollars (\$500,000) for a residential evaluation and treatment center as a sentencing alternative to incarceration for selected nonviolent prisoners and parole violators.

No more than one million dollars (\$1,000,000) of the general fund appropriations to the community offender management program of the corrections department shall be used for detention costs for parole violators.

The general fund appropriations to the community offender management program of the corrections department include fifty thousand dollars (\$50,000) to be transferred to general services department for maintenance at Fort Stanton facilities.

Performance measures:

(a) Outcome: Percent increase in out-of-office contacts or home visits

with offenders on maximum supervision 10%

(b) Quality: Number of regular cases for each probation and parole

officer 81

(c) Quality: Number of special cases for each probation and parole

officer 21

(5) Community corrections/vendor-run:

The purpose of the community corrections/vendor-run program operated by vendors under contract to the corrections department is to provide selected offenders on probation and parole with residential and nonresidential service settings and to provide intermediate sanctions and post-incarceration support services as a cost-effective alternative to incarceration without undue risk to the public.

Appropriations:

(a) Contractual services 149.0 149.0

(b) Other 3,018.2 318.6 3,336.8

The appropriations for the community/corrections vendor-run program of the corrections department are appropriated to the community corrections grant fund.

Performance measures:

(a) Output: Number of terminations, per month, from male residential

treatment center at Fort Stanton 10

(b) Output: Number of graduates, per month, from male residential

treatment center at Fort Stanton 74

(c) Output: Number of transfers, other noncompletions, per month

from male residential treatment center at Fort Stanton 12

(6) Program support:

The purpose of program support is to provide quality administrative support and oversight to the department operating units to ensure a clean audit, effective budget and personnel management and cost-effective management information system services.

Appropriations:

(a)	Personal services and				
	employee benefits	4,749.1	185.9		4,935.0
(b)	Contractual services	253.0			253.0
(c)	Other	956.6	16.5	24.3	997.4
(d)	Other financing uses	2.1	1,205.3		1,207.4

Authorized FTE: 84.00 Permanent

The other state funds appropriation to program support of the corrections department in the other financing uses category includes one million two hundred five thousand three hundred dollars (\$1,205,300) for the corrections department building fund.

Performance measures:

- (a) Quality: Percent of employee files that contain performance appraisal development plans completed and submitted within the focal point evaluation period 90%

Subtotal 221,124.4

CRIME VICTIMS REPARATION COMMISSION:

(1) Victim compensation:

The purpose of the victim compensation program is to provide financial assistance and information to victims of violent crime in New Mexico so they can receive services to restore their lives.

Appropriations:

(a)	Personal services and				
	employee benefits	682.0			682.0
(b)	Contractual services	196.4			196.4
(c)	Other	811.1	380.0		1,191.1

Authorized FTE: 15.00 Permanent

Performance measures:

(a) Outcome: Percent of errors in compensation summaries to the board <5%

(2) Federal grant administration:

The purpose of the federal grant administration program is to provide funding and training to nonprofit victim providers and public agencies so they can provide services to victims of crime.

Appropriations:

(a)	Personal services and employee benefits		184.7	184.7
(b)	Contractual services		51.2	51.2
(c)	Other	3,577.2	3,577.2	
(d)	Other financing uses		935.2	935.2

Authorized FTE: 4.00 Term

Performance measures:

(a) Outcome: Percent of grant contracts submitted to subrecipients prior
to July 1 90%

Subtotal 6,817.8

DEPARTMENT OF PUBLIC SAFETY:

(1) Law enforcement:

The purpose of the law enforcement program is to provide the highest quality of law enforcement services to the public and ensure a safer New Mexico.

Appropriations:

(a)	Personal services and employee benefits	43,310.0	74.3	6,991.4	6,879.3	57,255.0
(b)	Contractual services	1,368.7	565.9	76.5	2,011.1	
(c)	Other	11,989.5	634.8	2,408.7	1,288.3	16,321.3

Authorized FTE: 980.00 Permanent; 46.00 Term

The internal services funds/interagency transfers appropriations to the law enforcement program of the department of public safety include seven million two hundred twenty thousand one hundred dollars (\$7,220,100) for the motor transportation division from the state road fund. Any unexpended or unencumbered balance in the department of public safety remaining at the end of fiscal year 2004 made from appropriations from the state road fund shall revert to the state road fund.

Appropriations:

(a)	Personal services and				
	employee benefits	1,985.7			1,985.7
(b)	Contractual services	120.0			120.0
(c)	Other	628.9		628.9	

Authorized FTE: 33.00 Permanent; 1.00 Term

Performance measures:

- (a) Efficiency: Percent of operability for all mission-critical software applications residing on agency servers 98%

(4) Accountability and compliance support:

The purpose of the accountability and compliance support program is to provide quality legal, administrative, financial, technical and auditing services to department of public safety programs in their commitment to building a safer, stronger New Mexico and to ensure the fiscal integrity and responsibility of those programs.

Appropriations:

(a)	Personal services and					
	employee benefits	3,079.8	83.4	91.5	409.5	3,664.2
(b)	Contractual services	113.7		54.1	10.4	178.2
(c)	Other	1,778.2	65.6	16.9	4,436.7	6,297.4

Authorized FTE: 66.00 Permanent; 12.00 Term

Performance measures:

- (a) Quality: Percent of employee files that contain performance appraisal development plans that were complete and submitted within thirty days of the employees' anniversary date 90%

- (b) Quality: Percent of prior year audit findings resolved by the department of public safety 100%

Subtotal 97,024.8

TOTAL PUBLIC SAFETY 278,269.4 19,125.9 12,037.3 26,760.1 336,192.7

H. TRANSPORTATION

STATE HIGHWAY AND TRANSPORTATION DEPARTMENT:

(1) Construction:

The purpose of the construction program is to provide improvements and additions to the state's highway infrastructure to serve the interest of the general public. These improvements include those activities directly related to highway planning, design and construction necessary for a complete system of highways in the state.

Appropriations:

(a)	Personal services and			
	employee benefits	22,555.0	23,425.5	45,980.5
(b)	Contractual services	70,611.4	159,495.0	230,106.4
(c)	Other	26,191.9	1,481.1	27,673.0
(d)	Debt service	6,500.6	102,704.5	109,205.1

Authorized FTE: 972.00 Permanent; 15.00 Term; 31.80 Temporary

Performance measures:

- (a) Outcome: Number of combined system-wide miles in deficient condition 3,800
- (b) Quality: Ride quality index for new construction >=4.2
- (c) Quality: Percent of final cost over bid amount 4.1%
- (d) Explanatory: Percent of programmed projects let
60%
- (e) Explanatory: Contracted engineering services as a percent of
construction costs <=14%
- (f) Efficiency: Time in calendar days between the date of physical
completion of a project and the date of final payment
notification 182

(2) Maintenance:

The purpose of the maintenance program is to maintain and provide improvements to the state's highway infrastructure to serve the interest of the general public. These improvements include those activities directly related to preserving roadway integrity and maintaining open highway access throughout the state system.

Appropriations:

(a)	Personal services and		
	employee benefits	44,682.4	44,682.4
(b)	Contractual services	42,529.4	42,529.4
(c)	Other	63,552.9	63,552.9

Authorized FTE: 1,177.00 Permanent; 1.00 Term; 17.80 Temporary

Performance measures:

(a) Outcome:	Number of interstate miles rated good	850
(b) Outcome:	Number of non-interstate miles rated good	5,762
(c) Outcome:	Number of combined system wide miles in deficient condition	3,800
(d) Efficiency:	Maintenance expenditures per lane mile of combined system-wide miles	\$5,250
(e) Quality:	Customer satisfaction levels at rest areas	81%
(f) Output:	Number of statewide improved pavement surface miles	5,000

(3) Traffic safety:

The purpose of the traffic safety program is to provide comprehensive traffic education that supports the laws related to driver and traffic safety while striving to decrease fatalities and accidents on the state's roadways.

Appropriations:

(a)	Personal services and			
	employee benefits	475.3	296.9	772.2
(b)	Other	3,490.6	7,229.3	10,719.9

Authorized FTE: 14.00 Permanent; 3.00 Term

Performance measures:

(a) Outcome:	Percent of front occupant seat belt use by the public	88.5%
(b) Outcome:	Number of head-on crashes per one hundred million vehicle miles traveled	3.0
(c) Outcome:	Number of alcohol-involved fatalities per one hundred million vehicle miles traveled	.74

(d) Outcome: Number of traffic fatalities per one hundred million

vehicle miles traveled 2.02

(4) Public transportation:

The purpose of the transportation program is to participate in the planning and operation of public transportation programs with metropolitan and regional planning organizations. The program consists of transportation alternatives for elderly and persons with disabilities, vanpools, buses and other public transportation modes.

Appropriations:

(a) Personal services and

employee benefits 372.1 133.0 505.1

(b) Other 221.9 8,262.5 8,484.4

Authorized FTE: 7.00 Permanent; 2.00 Term

Performance measures:

(a) Output: Annual rural public transportation ridership, in thousands 500.0

(b) Output: Number of welfare-to-work transportation ridership in rural

areas of New Mexico 35,000

(5) Aviation:

The purpose of the aviation program is to promote, develop, maintain and protect an air transportation infrastructure that provides for the safe and efficient airborne movement of people, goods and services within New Mexico and that provides access to the global aviation network.

Appropriations:

(a) Personal services and

employee benefits 379.9 379.9

(b) Contractual services 121.0 150.0 271.0

(c) Other 1,889.1 1,889.1

Authorized FTE: 7.00 Permanent

Performance measures:

(a) Outcome: Fiscal year total dollar amount of airport projects

completed, in millions \$15

(b) Outcome: Five-year capital improvement funding compared to needs 45%

(c) Output: Number of airport improvement projects around the state 50

(6) Program support:

The purpose of program support is to provide management and administration of financial and human resources, custody and maintenance of information and property, and the management of construction and maintenance projects.

Appropriations:

(a)	Personal services and				
	employee benefits	22,875.4	90.0	22,965.4	
(b)	Contractual services	1,630.2	1,630.2		
(c)	Other	16,764.2	16,764.2		
(d)	Other financing uses	7,220.1	7,220.1		

Authorized FTE: 424.00 Permanent; 1.90 Temporary

The other state funds appropriation to program support of the state highway and transportation department includes two million four hundred sixty-eight thousand three hundred dollars (\$2,468,300) in the personal services and employee benefits category for employee liability insurance. In the event that any portion of that amount is determined to be in excess of the amount billed by the general services department for that insurance in fiscal year 2004, a budget adjustment shall be made immediately to transfer the excess amount to the contractual services category of the construction program for road improvements.

Performance measures:

(a) Outcome:	Number of workers' compensation claims	133
(b) Efficiency:	Percent of payments made within thirty days of invoice	95%
(c) Quality:	Number of external audit findings	4
(d) Quality:	Percent of prior year audit findings resolved	75%

Subtotal 635,331.2

TOTAL TRANSPORTATION 332,063.4 303,267.8 635,331.2

I. OTHER EDUCATION

STATE DEPARTMENT OF PUBLIC EDUCATION:

Appropriations:

(a)	Personal services and				
	employee benefits	8,691.3	192.4	104.3	4,355.6 13,343.6
(b)	Contractual services	258.0	55.0	200.0	6,347.8 6,860.8

(c)	Other	319.3	348.2	91.6	1,456.5	2,215.6
(d)	Other financing uses			84.0	2,111.0	176.2 2,371.2

Authorized FTE: 177.20 Permanent; 80.00 Term

Performance measures for academic achievement:

(a) Explanatory: Number of state assessments aligned with standards

(b) Quality: Percent of districts "satisfied" with state department of public education technical assistance services for improved student achievement

(c) Outcome: Percent of students, parents, educators and community members who understand the alignment of student expectations, teaching and assessment

(d) Quality: Percent of stakeholders who perceive the accountability system as credible and fair

(e) Outcome: Percent of public school performance measures met

Performance measures for quality teachers, principals, administrators and educational support personnel:

(a) Outcome: Percent of districts and schools implementing professional development activities that align with their locally developed educational plan for student success

(b) Outcome: Percent of districts that implement state board of education policies and competencies for the education profession

(c) Quality: Percent of districts rating New Mexico's system of educator development as "excellent"

Subtotal 24,791.2

APPRENTICESHIP ASSISTANCE:

Appropriations: 650.0 650.0

Subtotal 650.0

REGIONAL EDUCATION COOPERATIVES:

Appropriations:

(a)	Northwest:	85.0	1,247.8	1,332.8
(b)	Northeast:		2,098.0	2,098.0
(c)	Lea county:	87.0	2,197.7	2,284.7
(d)	Pecos valley:	1,550.7	1,476.8	3,027.5
(e)	Southwest:	245.0	2,740.2	2,985.2
(f)	Central:	1,703.0	2,006.0	3,709.0
(g)	High plains:	1,465.2	1,767.7	3,232.9
(h)	Clovis:	25.8	1,298.7	1,324.5
(i)	Ruidoso:	3,850.0	1,750.0	5,600.0
	Subtotal		25,594.6	

STATE DEPARTMENT OF PUBLIC EDUCATION

SPECIAL APPROPRIATIONS:

Appropriations:

(a)	Beginning teacher induction	900.0		900.0
(b)	Charter schools stimulus			
	fund	200.0	200.0	
(c)	Re: Learning	900.0		900.0
(d)	Regional education technology			
	assistance	500.0		500.0
(e)	Advanced placement framework	381.6		381.6
(f)	Strengthening quality in			
	schools	500.0	500.0	
(g)	Performance-based budgeting			
	--support for districts	1,000.0		1,000.0
(h)	Indian Education Act	2,000.0		2,000.0

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, any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall not revert to the general fund.

COMMISSION ON HIGHER EDUCATION:

(1) Policy development and institutional financial oversight:

The purpose of the policy development and institutional financial oversight program is to provide a continuous process of statewide planning and oversight within the commission's statutory authority for the higher education partners to ensure both the efficient use of state resources and progress in implementing the public agenda.

Appropriations:

(a)	Personal services and						
	employee benefits	1,486.4	39.9	270.6	1,796.9		
(b)	Contractual services	26.1		36.0	62.1		
(c)	Other	898.8	30.0	190.0	3,634.4	4,753.2	

Authorized FTE: 24.00 Permanent; 9.50 Term

The federal funds appropriation to the policy development and institutional financial oversight program of the commission on higher education in the other category includes one million dollars (\$1,000,000) for the program development enhancement fund from the temporary assistance for needy families block grant which is contingent on House Bill 392, Senate Bill 370 or similar legislation of the first session of the forty-sixth legislature becoming law and contingent on the commission developing a program consistent with federal temporary assistance for needy families funding guidelines after review by both the human services department and legislative finance committee.

By July 1, 2003, the commission on higher education shall report to the office of the governor, state board of education, department of finance and administration and the legislative finance committee on performance measures and targets for recruitment, enrollment, retention and graduation rates of Native American students for fiscal year 2004. The commission on higher education shall provide an action plan by institution to achieve targeted results.

Any unexpended or unencumbered balance in the policy development and institutional financial oversight program remaining at the end of fiscal year 2004 from appropriations made from the general fund shall revert to the general fund.

Performance measures:

(a) Efficiency: Percent of properly completed capital infrastructure draws

released to the state board of finance within thirty days

of receipt from the institutions 75%

(b) Output: Percent of commission and committee meeting agendas that

were devoted to discussion and actions that focused on the

public agenda 60%

(2) Student financial aid:

The purpose of the student financial aid program is to provide access, affordability and opportunities for success in higher education to students and their families so that all New Mexicans can benefit from post-secondary education and training beyond high school.

Appropriations:

(a)	Other	22,252.8	28,324.5	324.0	50,901.3
(b)	Other financing uses		80.0		80.0

Performance measures:

(a) Output: Number of lottery success recipients enrolled in or graduated from college after the ninth semester 1,738

(b) Outcome: Percent of students meeting eligibility criteria for state loan programs who continue to be enrolled by the sixth semester 75%

(c) Outcome: Percent of students meeting eligibility criteria for work-study programs who continue to be enrolled by the sixth semester 70%

(d) Outcome: Percent of students meeting eligibility criteria for merit-based programs who continue to be enrolled by the sixth semester 75%

(e) Outcome: Percent of students meeting eligibility criteria for need-based programs who continue to be enrolled by the sixth semester 62%

Subtotal 57,593.5

UNIVERSITY OF NEW MEXICO:

(1) Main campus:

The purpose of the instruction and general program is to provide education services designated to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy, and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	146,058.0	105,851.7	3,438.6	255,348.3
(b)	Athletics	2,637.8	21,348.9	68.6	24,055.3
(c)	Educational television	1,243.6	3,313.2	1,174.9	5,731.7
(d)	Extended services instruction		1,679.2	1,679.2	
(e)	Other - main campus		161,385.7	87,074.0	248,459.7

Performance measures:

(a) Outcome: Percent of full-time, degree-seeking, first-time freshmen

retained to second year 75%

(b) Output: Number of post-baccalaureate degrees awarded 1,550

(c) Outcome: External dollars for research and public service, in

millions \$110

(2) Gallup branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a)	Instruction and general purposes	7,325.3	6,204.7	827.0	14,357.0
(b)	Extended services instruction		7,283.0	10.0	7,293.0
(c)	Nurse expansion	34.9		34.9	

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who, after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled 42.5%

(b) Outcome: Percent of graduates who were placed in jobs in New Mexico

based on unemployment insurance wage data 50%

(c) Output: Number of students enrolled in the area vocational schools

program 440

(3) Los Alamos branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 2,032.6 2,446.2 161.2 4,640.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who, after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled 60%

(b) Outcome: Percent of graduates placed in jobs in New Mexico based on

unemployment insurance wage data 46%

(c) Output: Number of students enrolled in the small business

development center program 375

(4) Valencia branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 3,981.2 2,958.1 1,825.0 8,764.3

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who, after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled 53%

(b) Outcome: Percent of graduates placed in jobs in New Mexico based on
unemployment insurance wage data 67%

(c) Output: Number of students enrolled in the adult basic education
program 1,150

(5) Taos branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general
purposes 1,329.0 3,031.7 514.9 4,875.6

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours
who, after three years, received a degree or certificate,
transferred, became transfer ready or are still enrolled 58%

(b) Outcome: Percent of graduates placed in jobs in New Mexico based on
unemployment insurance wage data 63%

(c) Output: Number of students enrolled in the concurrent enrollment
program 515

(6) Research and public service projects:

Appropriations:

(a)	Judicial selection	72.6		72.6
(b)	Judicial education center	283.6		283.6
(c)	Spanish resource center	109.9		109.9
(d)	Southwest research center		1,138.0	1,138.0
(e)	Substance abuse program		156.3	156.3
(f)	Native American intervention		196.5	196.5
(g)	Resource geographic			

	information system	131.5		131.5
(h)	Natural heritage program	80.8		80.8
(i)	Southwest Indian law clinic	122.9		122.9
(j)	BBER census and population analysis	52.3	4.4	56.7
(k)	New Mexico historical review	84.1	8.9	93.0
(l)	Ibero-American education consortium	168.9		168.9
(m)	Youth education recreation program	144.2		144.2
(n)	Advanced materials research	69.3		69.3
(o)	Manufacturing engineering program	404.5		404.5
(p)	Hispanic student center	128.8		128.8
(q)	Wildlife law education	75.7		75.7
(r)	Science and engineering women's career	22.1		22.1
(s)	Youth leadership development	78.2		78.2
(t)	Morrissey hall research	46.0		46.0
(u)	Disabled student services	235.7		235.7
(v)	Minority graduate recruitment and retention	172.9		172.9
(w)	Graduate research development fund	94.8	44.6	139.4

(x) Community-based education 428.0 428.0

(7) Health sciences center:

Appropriations:

(a) Medical school instruction
and general purposes 42,874.5 42,874.5

(b) Office of medical
investigator 3,192.9 16,500.0 3,800.0 23,492.9

(c) Emergency medical services
academy 751.0 800.0 .5 1,551.5

(d) Children's psychiatric
hospital 4,878.3 11,050.0 15,928.3

(e) Hemophilia program 519.7 519.7

(f) Carrie Tingley hospital 3,695.4 9,100.0 12,795.4

(g) Out-of-county indigent
fund 1,242.3 480.0 1,722.3

(h) Specialized perinatal care 423.3 423.3

(i) Newborn intensive care 2,933.7 2,820.0 5,753.7

(j) Pediatric oncology 583.3 450.0 1,033.3

(k) Young children's health
center 217.3 1,350.0 1,567.3

(l) Pediatric pulmonary center 172.4 172.4

(m) Area health education
centers 225.7 50.0 250.0 525.7

(n) Grief intervention program 152.3 2.0 154.3

(o) Pediatric dysmorphology 134.6 134.6

(p) Locum tenens 388.3 1,550.0 1,938.3

(q) Disaster medicine program 95.8 95.8

(r)	Poison control center	1,392.0	650.0	120.0	2,162.0
(s)	Fetal alcohol study	160.4			160.4
(t)	Telemedicine	417.2	350.0	3,450.0	4,217.2
(u)	Nurse-midwifery program	309.9			309.9
(v)	Research and other programs	850.0		850.0	
(w)	College of nursing expansion	1,347.2			1,347.2
(x)	Other - health sciences	169,725.0		40,600.0	210,325.0
(y)	Cancer center	2,644.2	24,851.5	1,300.0	28,795.7
(z)	Cancer center-NCI accreditation	1,450.0		1,450.0	
(aa)	Lung and tobacco-related illnesses	1,000.0		1,000.0	
(bb)	Genomics, biocomputing and environmental health research	1,500.0	1,900.0	11,450.0	14,850.0
(cc)	Los pasos program	50.0		510.0	560.0
(dd)	Trauma specialty education	400.0			400.0
(ee)	Pediatrics specialty education	400.0		400.0	

The general fund appropriations to the university of New Mexico include four million four hundred thousand dollars (\$4,400,000) for the following: one million dollars (\$1,000,000) for research and clinical care programs in lung and tobacco-related illnesses; one million five hundred thousand dollars (\$1,500,000) for research in genomics, biocomputing and environmental health; four hundred fifty thousand dollars (\$450,000) for the poison control center; four hundred thousand dollars (\$400,000) for the pediatric oncology program; one hundred fifty thousand dollars (\$150,000) for the telemedicine program; fifty thousand dollars (\$50,000) for the los pasos program; fifty thousand dollars (\$50,000) for area health education centers; four hundred thousand dollars (\$400,000) for specialty education in trauma; and four hundred thousand dollars (\$400,000) for specialty education in pediatrics.

Contingent on enactment of Senate Bill 804 of the first session of the forty-

sixth legislature, the health science center of the university of New Mexico shall report to the commission on higher education and the legislative finance committee on methods to coordinate care with clinics and providers in rural New Mexico, especially for native Americans. The report shall also address related infrastructure needs.

Subtotal 957,305.

NEW MEXICO STATE UNIVERSITY:

(1) Main campus:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy, and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general				
	purposes	90,210.5	54,312.2	8,510.0	153,032.7
(b)	Athletics	2,766.9	5,799.7	49.0	8,615.6
(c)	Educational television	1,100.2	317.2	599.2	2,016.6
(d)	Extended services				
	instruction	143.9		143.9	
(e)	Other - main campus		55,784.0	72,240.4	128,024.4

Performance measures:

- (a) Outcome: Percent of full-time, degree-seeking, first-time freshmen
retained to second year 75%
- (b) Outcome: External dollars for research and creative activity, in
millions \$184.1
- (c) Output: Number of teacher preparation programs available at New
Mexico community college sites 3

(2) Alamogordo branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a)	Instruction and general				
	purposes	5,218.5	3,286.1	1,661.5	10,166.1
(b)	Nurse expansion	27.9		27.9	

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who, after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled 38%

(b) Outcome: Percent of graduates placed in jobs in New Mexico based on

unemployment insurance wage data 54%

(c) Output: Number of students enrolled in the small business

development center program 950

(3) Carlsbad branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 2,926.9 3,001.9 2,168.8 8,097.6

(b) Nurse expansion 34.9

34.9

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who, after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled 61%

(b) Outcome: Percent of graduates placed in jobs in New Mexico based on

unemployment insurance wage data 85%

(c) Output: Number of students enrolled in the contract training program 225

(4) Dona Ana branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes	11,823.7	9,023.4	6,253.1	27,100.2
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(b) Nurse expansion	104.8		104.8	
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who, after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled 37%

(b) Outcome: Percent of graduates placed in jobs in New Mexico based on

unemployment insurance wage data 63%

(c) Output: Number of students enrolled in the adult basic education

program 5,400

(5) Grants branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes	2,507.0	1,971.6	1,387.6	5,866.2
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who, after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled 39.5%

(b) Outcome: Percent of graduates placed in jobs in New Mexico based on

unemployment insurance wage data 66%

(c) Output: Number of students enrolled in the concurrent enrollment

program 1,180

(6) Department of agriculture:

Appropriations:

(a) Department of agriculture	8,330.0	2,476.1	2,822.0	13,628.1
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(7) Research and public service projects:

Appropriations:

(a)	Agricultural experiment station	11,413.9	2,793.7	8,162.0	22,369.6
(b)	Cooperative extension service	9,384.7	8,081.5	5,432.5	22,898.7
(c)	Water resource research	449.2	1,025.3	283.6	1,758.1
(d)	Coordination of Mexico programs	96.8	37.0	133.8	
(e)	Indian resources development		375.1	40.1	415.2
(f)	Waste management education program	499.8	157.6	3,710.2	4,367.6
(g)	Campus security	91.4		91.4	
(h)	Carlsbad manufacturing sector development program		373.1		373.1
(i)	Manufacturing sector development program	396.2	.2		396.4
(j)	Alliances for underrepresented students		368.4	6.9	375.3
(k)	Nurse expansion	419.2		419.2	

The general fund appropriation to the cooperative extension service at New Mexico state university includes one hundred twenty-five thousand dollars (\$125,000) for New Mexico state university rodeo program; ~~twenty-four thousand seven hundred dollars (\$24,700) for economic sustainability of chile; and one hundred thousand dollars (\$100,000) for a viticulturist to provide technical services to New Mexico vineyards and wine industry.~~ [LINE-ITEM VETO]

The general fund appropriation to the water resource research institute at New Mexico state university includes one hundred thousand dollars (\$100,000) to increase research in water conservation, planning and management.

Subtotal 410,457.4

NEW MEXICO HIGHLANDS UNIVERSITY:

(1) Main:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general					
	purposes	21,223.3	5,423.0	2,300.0	2,478.5	31,424.8
(b)	Athletics	1,340.9	155.0		1,495.9	
(c)	Extended services					
	instruction	2,156.0	670.8		2,826.8	

Performance measures:

- (a) Outcome: Percent of first-time, full-time freshmen retained to second year 63%
- (b) Outcome: Percent of graduating seniors indicating "satisfied" or "very satisfied" with the university on student satisfaction survey 90%
- (c) Outcome: Percent of total funds generated by grants and contracts 40%

(2) Research and public service projects:

Appropriations:

(a)	Upward bound	106.1		517.8	623.9	
(b)	Advanced placement	297.8			297.8	
(c)	Native American recruitment and retention	45.6			45.6	
(d)	Diverse populations study	220.5		290.1	510.6	
(e)	Visiting scientist	18.3			18.3	

The general fund appropriation to the diverse populations study at New Mexico highlands university includes ten thousand dollars (\$10,000) for the ENLACE program.

Subtotal 37,243.7

WESTERN NEW MEXICO UNIVERSITY:

(1) Main:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy, and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	12,957.7	3,899.7	539.2	17,396.6
(b)	Athletics	1,258.1	153.2	1,411.3	
(c)	Educational television	121.4			121.4
(d)	Extended services instruction		887.9	887.9	

Performance measures:

- (a) Outcome: Percent of first-time, full-time freshmen retained to second year 60%
- (b) Output: Number of graduates receiving teacher licensure 94
- (c) Outcome: External dollars to be used for programs to promote student success, in millions \$7.6

(2) Research and public service projects:

Appropriations:

(a)	Child development center	348.7	341.8		690.5
(b)	North American free trade agreement	16.2		16.2	
(c)	Nurse expansion	41.9		41.9	
	Subtotal		20,565.8		

EASTERN NEW MEXICO UNIVERSITY:

(1) Main campus:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy, and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general				
	purposes	20,417.7	7,300.0	2,200.0	29,917.7
(b)	Athletics	1,612.1	300.0	1,912.1	
(c)	Educational television	996.0	500.0	100.0	1,596.0
(d)	Extended services				
	instruction	600.0		600.0	
(e)	Other - main campus		9,000.0	8,000.0	17,000.0
(f)	Nurse expansion	41.9		41.9	

Performance measures:

- (a) Outcome: Percent of first-time freshmen retained to second year 60%
- (b) Efficiency: Ratio of FTE students to FTE of instruction and general staff (faculty and staff) 6.2:1
- (c) Outcome: Number of external dollars supporting research and student success, in millions \$5.25

(2) Roswell branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a)	Instruction and general				
	purposes	10,241.0	9,000.0	10,000.0	29,241.0
(b)	Extended services				
	instruction	250.0		250.0	
(c)	Ruidoso off-campus center		754.0	900.0	1,654.0
(d)	Nurse expansion	69.9		69.9	

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours

who, after three years, received a degree or certificate,
 transferred, became transfer ready or are still enrolled 68%

(b) Output: Percent of programs having stable or increasing enrollments
 over decreasing enrollments 63%

(3) Research and public service projects:

Appropriations:

(a)	Center for teaching excellence	268.1		268.1
(b)	Blackwater Draw site and museum	90.8		90.8
(c)	Assessment project	134.7		134.7
(d)	Job training for physically and mentally challenged	25.0		25.0
(e)	Airframe mechanics	74.9		74.9
	Subtotal		82,876.1	

NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY:

(1) Main:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy, and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	21,531.7	8,000.0	13,000.0	42,531.7
(b)	Athletics	153.9	9.0		162.9

Performance measures:

(a) Outcome: Percent of first-time freshmen retained to second year 75%

(b) Output: Number of students enrolled in master of science teaching
 program 35

(c) Outcome: External dollars for research and creative activity, in
 millions \$58

(2) Research and public service projects:

Appropriations:

(a)	Research and other programs			18,000.0	18,000.0	
(b)	Bureau of mines	3,752.7	3,879.5	800.0	8,432.2	
(c)	Petroleum recovery research center	1,709.1	1,936.4	3,500.0	7,145.5	
(d)	Bureau of mine inspection	284.4	293.5	250.0	827.9	
(e)	Energetic materials research center	667.0	721.3	20,000.0	21,388.3	
(f)	Science and engineering fair			112.9	111.1	224.0
(g)	Institute for complex additive systems analysis	523.2	823.8	20,000.0	21,347.0	
(h)	Cave and karst research	331.8	360.5	1,000.0	1,692.3	
(i)	Geophysical research center			852.1	877.1	20,000.0
(j)	Homeland security center	237.0	877.1	20,000.0	21,114.1	

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 164,595.1

NORTHERN NEW MEXICO COMMUNITY COLLEGE:

(1) Main:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes	7,748.2	625.0	3,684.6	12,057.8
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(b) Nurse expansion	27.9		27.9	
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who, after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled	71%
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(b) Outcome: Percent of graduates placed in jobs in New Mexico based on

unemployment insurance wage data	63%
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(c) Output: Number of students enrolled in the adult basic education

program	400
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(2) Research and public service projects:

Appropriations:

(a) Northern pueblos institute	56.9	56.9
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Subtotal	12,142.6
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SANTA FE COMMUNITY COLLEGE:

(1) Main:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes	7,596.4	17,240.0	600.0	25,436.4
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(b) Nurse expansion	34.9	40.0	74.9
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled	41%
--	-----

(b) Outcome: Percent of graduates placed in jobs in New Mexico based on

unemployed insurance wage data 76%

(c) Output: Number of students enrolled in the contract training program 1,400

(2) Research and public service projects:

Appropriations:

(a) Small business development

centers 2,944.2 3,000.0 560.0 6,504.2

(b) Working to learn 60.0 60.0

(c) Sign language services 21.2 30.0 51.2

Subtotal 32,126.7

TECHNICAL-VOCATIONAL INSTITUTE:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 39,439.9 39,670.0 4,000.0 83,109.9

(b) Other 4,173.0 11,150.0 15,323.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled 43%

(b) Outcome: Percent of graduates placed in jobs in New Mexico based on

unemployment insurance wage data 72.5%

(c) Output: Number of students enrolled in distance education program 2,150

Subtotal 98,432.9

LUNA VOCATIONAL TECHNICAL INSTITUTE:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a)	Instruction and general				
	purposes	6,038.1	250.0	460.0	6,748.1
(b)	Nurse expansion	34.9			34.9
(c)	Other	1,500.0	1,400.0	2,900.0	

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours who after three years, received a degree or certificate, transferred, became transfer ready or are still enrolled 72%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico based on unemployment insurance wage data 60%
- (c) Output: Number of students enrolled in the small business development center program 246
- Subtotal 9,683.0

MESALANDS COMMUNITY COLLEGE:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a)	Instruction and general					
	purposes	2,186.5	345.5	400.0	461.3	3,393.3
(b)	Other	800.0	350.0	1,150.0		

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours who after three years, received a degree or certificate, transferred, became transfer ready or are still enrolled 53%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico based on unemployment insurance wage data 44%

(c) Output: Number of students enrolled in the small business

development center program 65

Subtotal 4,543.3

NEW MEXICO JUNIOR COLLEGE:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 7,362.4 5,450.0 3,536.2 1,893.0 18,241.6

(b) Athletics 34.5 900.0 934.5

(c) Nurse expansion 69.9 69.9

(d) Other 4,287.0 4,287.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

who after three years, received a degree or certificate,

transferred, became transfer ready or are still enrolled 65%

(b) Outcome: Percent of graduates placed in jobs in New Mexico based on

unemployment insurance wage data 58%

(c) Output: Number of students enrolled in distance education program 1,780

Subtotal 23,533.0

SAN JUAN COLLEGE:

(1) Main:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 15,105.9 245.5 1,225.3 16,576.7

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours who after three years, received a degree or certificate, transferred, became transfer ready or are still enrolled 53%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico based on unemployment insurance wage data 62%
- (c) Output: Number of students enrolled in the service learning program 270
- (2) Research and public service projects:

Appropriations:

- | | | | |
|----------|------------------------|----------|-------|
| (a) | Dental hygiene program | 200.1 | 200.1 |
| (b) | Nurse expansion | 134.7 | 134.7 |
| Subtotal | | 16,911.5 | |

CLOVIS COMMUNITY COLLEGE:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

- | | | | | | |
|-----|----------------------------------|---------|-------|---------|----------|
| (a) | Instruction and general purposes | 8,952.8 | 150.0 | 1,000.0 | 10,102.8 |
| (b) | Nurse expansion | 69.9 | 69.9 | | 139.8 |
| (c) | Other | 250.0 | | 4,100.0 | 4,350.0 |

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours who after three years, received a degree or certificate, transferred, became transfer ready or are still enrolled 41%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico based on unemployment insurance wage data 54%
- (c) Output: Number of students enrolled in the concurrent enrollment

program	375			
Subtotal		14,592.6		

NEW MEXICO MILITARY INSTITUTE:

Appropriations:

(a)	Instruction and general purposes	14,461.1	416.1	14,877.2
(b)	Other	5,053.8	5,053.8	
Subtotal		19,931.0		

TOTAL HIGHER EDUCATION	615,762.6	889,251.4	6,816.1	450,703.3
1,962,533.4				

K. PUBLIC SCHOOL SUPPORT

Except as otherwise provided, unexpended and unencumbered balances of appropriations made in this subsection shall not revert at the end of fiscal year 2004.

PUBLIC SCHOOL SUPPORT:

(1) State equalization guarantee distribution:

Appropriations:	1,720,906.6	3,000.0	1,723,906.6
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Prior to the approval of school district and charter school budgets for fiscal year 2004, the state superintendent shall verify that each local school board is providing a six percent salary increase for teachers and instructional staff and a minimum salary of thirty thousand dollars (\$30,000) for teachers, no later than the last pay period of December 2003; a three percent salary increase for all other certified and noncertified school employees, including transportation employees, effective July 1, 2003.

Prior to the approval of a school district and charter school's budget for fiscal year 2004, the state superintendent shall verify that an amount equal to or more than one percent of a school district's or charter school's approved fiscal year 2003 operating budget has been reallocated to direct instruction for expenditure in fiscal year 2004.

Prior to the approval of a school district and charter school budget for fiscal year 2004, the state superintendent must certify to the secretary of finance and administration and the legislative finance committee that the general fund appropriation to the state equalization distribution reflects the deduction of sixteen million four hundred thousand dollars (\$16,400,000) in school districts' and charter schools' allowable unrestricted and unreserved operational cash balances and the emergency reserve as of June 30, 2003 pursuant to house education substitute for House Bill 745 of the forty-sixth legislative session.

In developing fiscal year 2004 operating budgets, school districts and charter schools shall not budget June 30, 2003 cash balances without the approval of the superintendent of public instruction and the secretary of finance and administration.

The general fund appropriation to the state equalization guarantee distribution includes five million seven hundred thousand dollars (\$5,700,000) to fund the first year implementation of the three-tier licensure structure for teachers and to bring all teachers to a minimum salary of thirty thousand dollars (\$30,000).

The general fund appropriation to the state equalization guarantee distribution includes: thirty- seven million nine hundred seventy-seven thousand three hundred dollars (\$37,977,300) for a six percent salary increase for teachers and instructional staff; and eleven million five hundred fifty-four thousand five hundred dollars (\$11,554,500) for a three percent salary increase for all other certified and noncertified employees.

The general fund appropriation to the state equalization guarantee distribution includes twenty-five million dollars (\$25,000,000) for school districts in fiscal year 2004 for the employers' portion of the increase in insurance costs.

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 to establish budgets for the 2003-2004 school year and then upon verification of the number of units statewide for fiscal year 2004 but no later than January 31, the superintendent of public instruction may adjust the program unit value.

For the 2003-2004 school year, the state equalization guarantee contains sufficient funding for districts implementing a formula-based program for the first time. Those districts shall use current year MEM in the calculation of program units for the new formula-based program.

The general fund appropriation to the state equalization guarantee distribution reflects the deduction of federal revenues pursuant to Paragraph (2) of Subsection C of Section 22-8-25 NMSA 1978 that includes payments commonly known as "impact aid funds" pursuant to 20 USCA 7701 et seq., formerly known as "PL874 funds".

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 receipts otherwise unappropriated.

Performance measures for academic achievement:

(a) Outcome: Percent of students whose national percentile rank for norm-referenced tests is at or above the fortieth percentile in reading

(b) Outcome: Percent of schools where the national percentile score for norm-referenced tests is at or above the fortieth percentile in reading

(c) Outcome: Percent of students whose national percentile rank for norm-referenced tests is at or above the fortieth percentile in language arts

(d) Outcome: Percent of schools where the national percentile score for norm-referenced tests is at or above the fortieth percentile in language arts

(e) Outcome: Percent of students whose national percentile rank for norm-referenced tests is at or above the fortieth

percentile in mathematics

(f) Outcome: Percent of schools where the national percentile score for norm-referenced tests is at or above the fortieth

percentile in mathematics

(g) Outcome: Percent of students in the third grade who read at grade level

(h) Outcome: Percent of schools where eighty percent or more of students in the third grade read at grade level

(i) Outcome: Percent of schools with grades seven through eight that have a dropout rate of two percent or less

(j) Outcome: Percent of schools with grades nine through twelve that have a dropout rate of three percent or less

(k) Outcome: Percent of kindergarten students meeting language arts performance standards for reading readiness

(l) Outcome: Percent of schools where ninety percent of kindergarten students meet language arts performance standards for reading readiness

Performance measures for quality teachers, principals, administrators and educational support personnel:

(a) Quality: Percent of teachers licensed or endorsed in the subject they teach

(b) Quality: Percent of schools where ninety-five percent of the teachers are licensed or endorsed in the subject they teach

Performance measures for accountability, choice and technology: earning public trust:

(a) Quality: Percent of schools where eighty percent of their teachers express confidence in the use of new classroom technologies

Performance measures for safe schools and respectful learning environment:

(a) Explanatory: Number of incidents of violence, weapon violations and

harassment on the bus, on campus and at school-sponsored events

Performance measures for equitable access and opportunity:

- (a) Outcome: Percent of school facilities that attain a facility-condition index equal to or greater than the level established by the public school capital outlay council

Performance measures for return of financial investment:

- (a) Explanatory: Percent of operating general fund resources spent on instruction

Performance measures for constructive engagement with our partners:

- (a) Quality: Percent of stakeholders and partners who rate their involvement with public schools as positive

(2) Transportation distribution:

Appropriations: 95,722.2 95,722.2

The general fund appropriation to the transportation distribution includes one million two hundred twenty two thousand two hundred dollars (\$1,222,200) for a three percent salary increase for transportation employees effective July 1, 2003.

(3) Supplemental distribution:

Appropriations:

(a)	Out-of-state tuition	495.0	495.0
(b)	Emergency supplemental	2,600.0	2,600.0

Any unexpended or unencumbered balance in the distributions authorized remaining at the end of fiscal year 2004 from appropriations made from the general fund shall revert to the general fund.

The emergency supplemental appropriation includes funds to support school districts identified by the state department of public education to have insufficient cash balances in fiscal year 2004.

Subtotal 1,822,723.8

FEDERAL FLOW THROUGH:

Appropriations: 300,000.0 300,000.0

Subtotal 300,000.0

INSTRUCTIONAL MATERIAL FUND:

Appropriations: 32,700.0 32,700.0

The appropriation to the instructional material fund is made from the federal Minerals Lands Leasing Act receipts.

Subtotal 32,700.0

EDUCATIONAL TECHNOLOGY FUND:

Appropriations: 5,000.0 5,000.0

Subtotal 5,000.0

INCENTIVES FOR SCHOOL IMPROVEMENT FUND:

Appropriations: 1,600.0 1,600.0

Subtotal 1,600.0

THREE-TIERED LICENSURE SYSTEM IMPLEMENTATION:

Appropriations: 250.0 250.0

Subtotal 250.0

TOTAL PUBLIC SCHOOL SUPPORT 1,859,273.8 3,000.0 300,000.0 2,162,273.8

GRAND TOTAL FISCAL YEAR 2004

APPROPRIATIONS 4,057,341.4 1,727,179.0 829,013.5 3,501,835.4 10,115,369.3

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 appropriation may be expended in fiscal years 2003 and 2004. Unless otherwise indicated, any unexpended or unencumbered balance of the appropriations remaining at the end of fiscal year 2004 shall revert to the general fund.

~~[(1) LEGISLATIVE COUNCIL SERVICE: 300.0 300.0]~~

~~For a study of the public education funding formula.] [LINE-ITEM VETO]~~

(2) LEGISLATIVE FINANCE COMMITTEE:

The period of time for expending the one hundred twenty-five thousand dollars (\$125,000) appropriated from the general fund in Item (1) of Section 5, Chapter 4, Laws 2002 (1st E.S.) for professional accounting and auditing services of the human services

department in coordination with the department of finance and administration is extended through June 30, 2004 for the same purpose.

(3) SECOND JUDICIAL DISTRICT ATTORNEY: 73.0

73.0

For payment of a furniture lease agreement.

(4) FOURTH JUDICIAL DISTRICT ATTORNEY:

The period of time for expending the four hundred fifty thousand dollars (\$450,000) appropriated from the general fund in Item (6) of Section 5, Chapter 4, Laws 2002 (1st E.S.) for prosecution of criminal cases related to the Santa Rosa prison riots is extended through June 30, 2004, for the same purpose.

(5) ATTORNEY GENERAL:

The period of time for expending the four million nine hundred ninety thousand dollars (\$4,990,000) appropriated from the general fund in Item (8) of Section 5, Chapter 4, Laws 2002 (1st E.S.) for the attorney general to enter into cooperative agreements with the office of state engineer, interstate stream commission and the New Mexico environment department in preparing for potential litigation with Texas on water issues is extended through June 30, 2004, for the same purpose.

(6) ATTORNEY GENERAL:

The period of time for expending the three million dollars (\$3,000,000) appropriated from the general fund operating reserve in Item (9) of Section 5, Chapter 4, Laws 2002 (1st E.S.) to the attorney general contingent on certification by the attorney general to the state board of finance that the appropriation made in Item (8) of Section 5, Chapter 4, Laws of 2002 (1st E.S.) has been expended and additional funds are required to prepare for potential litigation with Texas on water issues and contingent on the state board of finance certifying that need is extended through June 30, 2004, for the same purpose.

(7) TAXATION AND REVENUE DEPARTMENT: 5,000.0

5,000.0

For establishing a tax fraud unit, expanding audit and compliance functions and enhancing tax collection efforts in fiscal years 2003 and 2004.

(8) DEPARTMENT OF FINANCE AND

ADMINISTRATION:

The period of time for expending the one hundred twenty-five thousand dollars (\$125,000) appropriated from the general fund in Item (11) of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) for professional accounting and auditing services of the human services department in coordination with the legislative finance committee is extended through June 30, 2004, for the same purpose.

(9) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 100.0

100.0

For operation of the Cumbres and Toltec scenic railroad.

(10) PUBLIC DEFENDER DEPARTMENT:

The period of time for expending the nine hundred sixty-four thousand six hundred dollars (\$964,600) appropriated from the general fund for defense of the criminal cases related to the Santa Rosa prison riots in Item (29) of Section 6 of Chapter 64 of Laws 2001 is extended through June 30, 2004, for the same purpose.

(11) SECRETARY OF STATE:

The period of time for expending the one million four hundred fifty thousand dollars (\$1,450,000) appropriated from the general fund in Item (14) of Section 8 of Chapter 64 of Laws 2001 for the secretary of state to complete implementation of commercial off-the-shelf voter registration and election management system to register voters, maintain voter databases and manage elections in all counties where the secretary of state shall work with New Mexico counties to develop and implement the system and the counties shall bear a share of the cost is extended through June 30, 2004, for the same purpose.

(12) NEW MEXICO STATE RACING COMMISSION:

One hundred thousand dollars (\$100,000) is appropriated from the appropriation contingency fund to the state racing commission for expenditure in fiscal years 2003 and 2004 contingent upon issuance of a license to operate a racetrack in Hobbs. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the appropriation contingency fund.

(13) OFFICE OF CULTURAL AFFAIRS: 200.0

200.0

For permanent exhibits at the New Mexico farm and ranch heritage museum.

(14) DEPARTMENT OF GAME AND FISH: 1,077.4

1,077.4

To continue environmental remediation of Terrero mine. The appropriation is from the game protection fund.

(15) COMMISSIONER OF PUBLIC LANDS:

The period of time for expending the two hundred thousand dollars (\$200,000) appropriated from the state lands maintenance fund in Item (28) of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) for royalty recovery litigation costs is extended through June 30, 2004, for the same purpose.

(16) COMMISSIONER OF PUBLIC LANDS:

The commissioner of public lands is authorized to hold in suspense amounts received pursuant to agreements entered into for the sale of state royalty interests that, as a result of the sale, become eligible for tax credits under Section 29 of the internal revenue code and are above those amounts required by law to be transferred to the permanent funds. The commissioner may expend as much of the money so held in suspense, as well as additional money held in escrow accounts resulting from the sales and money held in fund balances, as is necessary to repurchase the royalty interests pursuant to the agreements.

(17) COMMISSIONER OF PUBLIC LANDS: 1,000.0

1,000.0

For expenditure in fiscal years 2003 and 2004 for state lands inventory, water management and forest health. The appropriation is from the state lands maintenance fund.

(18) COMMISSIONER OF PUBLIC LANDS: 800.0

800.0

For extension of university boulevard to Mesa Del Sol located in Bernalillo county. The appropriation is from the state lands maintenance fund.

(19) OFFICE OF THE STATE ENGINEER:

The period of time for expending the one million five hundred thousand dollars (\$1,500,000) appropriated from the general fund in Item (29) of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) to administer the Pecos river supreme court decree is extended through June 30, 2004, for the same purpose.

(20) OFFICE OF THE STATE ENGINEER:

The period of time for expending the one million two hundred fifty thousand dollars (\$1,250,000) appropriated from the general fund in Item (30) of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) to continue the first phase of a larger multi-year plan for the completion of adjudication of all water uses of the Rio Grande and Pecos river systems is extended through June 30, 2004, for the same purpose.

(21) OFFICE OF THE STATE ENGINEER:

The period of time for expending the two million twenty thousand six hundred dollars (\$2,020,600) appropriated from the general fund in Item (31) of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) for file abstraction and imaging to the water administration technical engineering resource system is extended through June 30, 2004, for the same purpose.

(22) OFFICE OF THE STATE ENGINEER:

The period of time for expending the five hundred thousand dollars (\$500,000) appropriated from the general fund in Item (32) of Section 5, Chapter 4, Laws 2002 (1st E.S.) for establishing the required data evaluations of the state's framework water plan and regional plans is extended through June 30, 2004, for the same purpose.

[(23) LABOR DEPARTMENT: _____ 1,550.0 _____]

1,550.0

~~For high school career centers in New Mexico. The appropriation is from the Reed Act distribution fund, consisting of funds made available to the state of New Mexico as of March 13, 2002, pursuant to Section 209 of the Federal Temporary Extended Unemployment Act of 2002. Any unexpended or unencumbered balance remaining at the end of fiscal 2007 shall revert to the Reed Act distribution fund.] [LINE-ITEM VETO]~~

(24) DEVELOPMENTAL DISABILITIES PLANNING

COUNCIL: 300.0

300.0

For the guardianship program.

(25) DEPARTMENT OF HEALTH: 250.0

250.0

To repay the board of finance loan for the Los Amigos nursing home receivership costs.

(26) DEPARTMENT OF ENVIRONMENT: 1,000.0
1,000.0

To continue environmental remediation of Terrero mine. The appropriation is from the corrective action fund.

(27) STATE HIGHWAY AND TRANSPORTATION

DEPARTMENT: 200.0

200.0

To provide Santa Ana drainage in Bernalillo county. The appropriation is from the rubberized asphalt fund.

(28) STATE HIGHWAY AND TRANSPORTATION

DEPARTMENT: 1,649.0

1,649.0

To acquire right-of-way for and design and construct an interchange at exit 102 on interstate 40. The appropriation is from the rubberized asphalt fund.

(29) STATE DEPARTMENT OF PUBLIC EDUCATION: 250.0

250.0

To offset the one percent allocation of program costs by school districts.

(30) STATE DEPARTMENT OF PUBLIC EDUCATION: 300.0

300.0

To establish a student identification number system.

(31) UNIVERSITY OF NEW MEXICO:

The period of time for expending the five million six hundred thousand dollars (\$5,600,000) appropriated from the general fund in Item (86) of Section 6 of Chapter 64 of Laws 2001 for the cancer research and treatment center to achieve national cancer institute designation as a comprehensive cancer center is extended through June 30, 2005, for the same purpose.

(32) COMPUTER SYSTEMS ENHANCEMENT FUND: 13,200.0

13,200.0

TOTAL SPECIAL APPROPRIATIONS	19,973.0	5,726.4	1,550.0
	27,249.4		

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 2003 for the purposes specified. Disbursement of these amounts shall be subject to certification by the agency to the department of finance and administration and the legislative finance committee that no other funds are available in fiscal year 2003 for the purpose specified and approval by the department of finance and administration. Any unexpended or unencumbered balances remaining at the end of fiscal year 2003 shall revert to the appropriate fund.

(1) ADMINISTRATIVE OFFICE OF THE COURTS: 200.0

200.0

From cash balances for payment of jurors and court interpreters.

(2) SECOND JUDICIAL DISTRICT COURT: 120.0

120.0

For personal services and employee benefits.

(3) ELEVENTH JUDICIAL DISTRICT ATTORNEY: 20.0

20.0

For expert witnesses in prosecution of the Fry case.

(4) ELEVENTH JUDICIAL DISTRICT ATTORNEY: 25.0

25.0

For continued prosecution of the Fry case.

(5) TAXATION AND REVENUE DEPARTMENT: 700.0

700.0

Notwithstanding the provisions of Section 66-6-6.1 NMSA 1978, the motor vehicle program of the taxation and revenue department may use cash balances from fees assessed pursuant to the Mandatory Financial Responsibility Act for the production of motor vehicle license plates, including motorcycles.

(6) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 100.0

100.0

For operation of the Cumbres and Toltec scenic railroad.

(7) DEPARTMENT OF FINANCE AND

ADMINISTRATION:

In addition to the transfers authorized in the General Appropriation Act of 2002, the secretary of finance and administration is authorized to transfer additional amounts up to three hundred seventy-five thousand dollars (\$375,000) from the general fund operating reserve to the board of finance emergency fund upon certification by the state board of finance pursuant to Section 6-1-2 NMSA 1978 that a critical emergency exists that cannot be addressed by disaster declaration or other emergency or contingency funds and upon review by the legislative finance committee.

(8) PUBLIC SCHOOL INSURANCE AUTHORITY: 1,566.0 2,567.0

4,133.0

For increased costs of liability insurance.

(9) HUMAN SERVICES DEPARTMENT: 25,540.0 72,615.3

98,155.3

To the medical assistance program for additional medicaid expenses incurred in fiscal year 2002.

(10) HUMAN SERVICES DEPARTMENT: 679.4 1,318.8

1,998.2

To the child support enforcement program for payment to the general services department for information systems division charges incurred in fiscal year 2002.

(11) HUMAN SERVICES DEPARTMENT: 29,800.0 108,900.0

138,700.0

To the medical assistance program for additional medicaid expenses.

(12) HUMAN SERVICES DEPARTMENT: 1,200.0 3,600.0

4,800.0

To the medical assistance program for the fiscal agent contract.

(13) HUMAN SERVICES DEPARTMENT: 700.0 2,100.0

2,800.0

To the medical assistance program for computer system enhancements.

(14) DEPARTMENT OF HEALTH: 2,000.0

2,000.0

For personal services and employee benefits and other costs.

(15) CHILDREN, YOUTH AND FAMILIES

DEPARTMENT: 1,000.0

1,000.0

For personal services and employee benefits.

(16) CORRECTIONS DEPARTMENT: 653.0

653.0

For payment of the medical services contract.

(17) DEPARTMENT OF PUBLIC SAFETY: 325.0

325.0

For personal services and employee benefits in motor transportation division.

~~[(18) STATE DEPARTMENT OF PUBLIC~~

~~EDUCATION: 197.0~~

197.0

~~For personal services and employee benefits in the public school capital outlay unit.~~

~~(19) STATE DEPARTMENT OF PUBLIC~~

~~EDUCATION: 901.5~~

901.5

~~To restore unit value.] [LINE-ITEM VETO]~~

(20) STATE DEPARTMENT OF PUBLIC

EDUCATION: 901.5

901.5

For school district-owned bus replacement.

TOTAL SUPPLEMENTAL AND DEFICIENCY

APPROPRIATIONS	65,728.4	3,467.0	188,534.1	257,729.5
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Section 7. DATA PROCESSING APPROPRIATIONS.--The following amounts are appropriated from the computer systems enhancement fund, or other funds as indicated, for the purposes specified. Unless otherwise indicated, the appropriations may be expended in fiscal years 2003 and 2004. Unless otherwise indicated, any unexpended or unencumbered balances remaining at the end of fiscal year 2004 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 quantifiable benefits and nonrecurring and recurring costs for the development and implementation of the proposed system and, for executive agencies, upon certification from the state chief information officer that indicates compliance with the information architecture and individual information and communication systems plans and the statewide information technology strategic plan. If the funding is to continue on a project,

the documentation shall include certification and a written report by the state chief information officer that the project is on schedule, approved project methodology has been followed, independent validation and verification contractor recommendations have been implemented, all funds previously allocated have been properly expended and additional funds are required. All hardware and software purchases funded through the base budget and the information technology funding recommendations shall be procured using consolidated purchasing led by the state chief information officer to achieve economies of scale and to provide the state with the best unit price. The state chief information officer shall prepare a statewide architecture plan with input from major stakeholders, determine how the state's existing and proposed computer systems will fit into the plan and provide a three-year strategy for systems to comply with the proposed architecture no later than July 1, 2003. Appropriations for any development project shall include a turnkey solution with associated warranty that assures the state's needs will be met upon implementation and acceptance of the system. The department of finance and administration shall provide a copy of the certification and all supporting documentation to the legislative finance committee.

(1) TAXATION AND REVENUE DEPARTMENT:

The period of time for expending the five hundred seventy thousand dollars (\$570,000) appropriated from the computer system enhancement fund contained in Item (2) of Section 7 of Chapter 4 of Laws 2002 (1st E.S.) is extended through fiscal year 2004 for the purpose of conducting an independent assessment of the oil and natural gas administrative revenue database processes and selection of state-of-the-art technology for use by the petroleum industry and end-users of the taxation and revenue department, energy, minerals and natural resources department and commissioner of public lands and, if necessary, for purification of existing data. One hundred ninety thousand dollars (\$190,000) of the appropriation is from the state lands maintenance fund. Fifty thousand dollars (\$50,000) of the appropriation shall be used to support the statewide New Mexico portal. The taxation and revenue department shall seek appropriate approval from the state chief information officer before funds are encumbered or expended.

(2) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 1,200.0

1,200.0

To continue to implement a single statewide, centralized telecommunications backbone for state government based on asynchronous transfer mode technology. Funding is contingent on the state chief information officer coordinating with the general services department office of communications and preparing a statewide architectural plan and a network architecture plan no later than July 1, 2003. The state-owned digital microwave telecommunication system shall be used at all locations possible to enhance statewide telecommunications and leverage state-owned resources without incurring additional costs. The department of finance and administration shall require the state chief information officer to establish a separate account from which funds can be drawn to pay for expenditures after approval by the information technology commission. The state chief information officer shall provide monthly written reports to the information technology commission, information technology oversight committee and the legislative finance committee.

(3) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 100.0

100.0

To maintain a statewide New Mexico portal that will allow citizens query capabilities about government information and services followed by transaction capabilities from a central location. A governing organization shall be formed to clarify decision-

making authority and responsibilities to enable the New Mexico portal to operate as an enterprise system. Agencies shall volunteer resources to demonstrate capabilities for integrating the New Mexico portal with current web development projects.

(4) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 7,800.0 4,500.0

12,300.0

To standardize selected financial transactions, code sets and definitions for electronic transmission to comply with the federal Health Insurance Portability and Accountability Act. New technologies shall be leveraged to make more efficient use of state funds. The period of time for expending the two million five hundred thousand dollars (\$2,500,000) appropriated from the computer system enhancement fund contained in Item (11) of Section 7 of Chapter 4 of Laws 2002 (1st E.S.) is extended through fiscal year 2004. The project shall be monitored by the state chief information officer. The department of finance and administration shall establish a special account from which funds can be drawn to pay for expenditures after approval by the information technology commission. The state chief information officer shall provide monthly written reports to the

information technology commission, information technology oversight committee and the legislative finance committee. This appropriation is contingent upon receiving written approval from the federal funding agency. The department of finance and administration and the state chief information officer shall ensure that prior to release of funds appropriate procurement rules are followed, including the use of a request for proposals for information technology professional services and products. The department of health is authorized to transfer funds from this project to other projects to comply with the federal Health Insurance Portability and Accountability Act.

(5) DEPARTMENT OF FINANCE AND

ADMINISTRATION

The period of time for expending the five hundred thousand dollars (\$500,000) appropriated from the computer systems enhancement fund contained in Item (8) of Section 8 of Chapter 64 of Laws 2001 extended by Item (10) of Section 7, Chapter 4 of Laws 2002 (1st E.S) is extended through fiscal year 2004 to develop a nonvendor-

specific statewide, integrated, interoperable and interactive state immunization information system capable of sharing data with all entities that gather and maintain health-related data. The project shall comply with state technology standards and open architecture standards. This appropriation is contingent upon receiving written approval from the federal funding agency.

(6) INFORMATION TECHNOLOGY

MANAGEMENT OFFICE: 100.0

100.0

To perform an assessment and publish a strategic plan for an enterprise-wide information security architecture. An enterprise information security architecture will address, but not be limited to, such issues as privacy, information security, business continuity, data integrity and software licensing. A multi-agency team shall be formed to perform an assessment and to develop and publish an enterprise information security strategic plan. Independent consulting resources may be utilized to assist in the assessment and publication of this plan. The state chief information officer shall approve any consultants selected by the multi-agency team to assist in this project. The strategic plan shall be presented to the information technology commission, the legislative finance committee and the information technology oversight committee. The strategic plan shall include recommendations for implementing a comprehensive information security architecture for state executive agencies. Judicial, legislative and educational agencies are encouraged but not required to implement recommendations published within this report.

(7) EDUCATIONAL RETIREMENT BOARD:

The period of time for expending the three million dollars (\$3,000,000) appropriated from the education retirement fund in Item (10) of Section 8, Chapter 64, Laws 2001 as extended by Item (11) of Section 7, Chapter 4, Laws 2002 (1st E.S.) is extended through fiscal year 2004. The period of time for expending the two million dollars (\$2,000,000) appropriated from the educational retirement fund contained in Item (8) of Section 7 of Chapter 4 of Laws 2002 (1st E.S.) is extended through fiscal year 2004 to complete implementation of an off-the-shelf solution for managing educational retirement membership information. The educational retirement board shall provide periodic reports to the legislative finance committee and the state chief information officer.

(8) PUBLIC EMPLOYEES

RETIREMENT ASSOCIATION: 6,700.0

6,700.0

To replace the public employee pension system with an off-the-shelf solution. The appropriation is from the public employees retirement income fund. The period of time for expending the six million dollars (\$6,000,000) appropriated from the public employees retirement income fund contained in Item (5) of Section 8, Chapter 5, Laws 2000 (S.S.) to replace the pension system extended by Item (12) of Section 7, Chapter 4, Laws 2002 (1st E.S.) is extended through fiscal year 2004. The period of time for expending the two million dollars (\$2,000,000) appropriated from the public employees retirement income fund contained in Item (12) of Section 8, Chapter 64, Laws 2001 extended by Item (12) of Section 7, Chapter 4 of Laws 2002 (1st E.S.) is extended through fiscal year 2004. The appropriation includes four FTE. Funds shall be released incrementally by phase after certification by the state chief information officer of successful completion of prior phases. The public employees retirement association shall provide periodic reports to the legislative finance committee and to state chief information officer.

(9) SECRETARY OF STATE: 400.0

400.0

To complete installation of a voter registration and election management system in three remaining counties, project management costs and to reimburse San Juan County, the pilot county, for its installation costs.

(10) PUBLIC REGULATION COMMISSION: 1,000.0

1,000.0

To complete the redesign of the existing cash management system for the insurance division and to correct all audit findings outlined in an independent validation and verification audit report. The appropriation is from the agent's surcharge fund. The

appropriation includes one FTE. Seventy thousand dollars (\$70,000) of the appropriation shall be used to support the statewide New Mexico portal. Funds shall be released incrementally by phase after certification by the state chief information officer of successful completion of prior phases.

(11) STATE AGENCY ON AGING:

The period of time for expending the two hundred twenty-five thousand dollars (\$225,000) appropriated from the general fund contained in Item (36) of Section 5, Chapter 4, Laws 2002 (1st E.S.) for computer hardware, software, network infrastructure, web server and training for planning service areas and senior citizen centers is extended through fiscal year 2004. The project shall comply with state technology standards and open architecture standards.

(12) HUMAN SERVICES DEPARTMENT: 17,758.8
17,758.8

To convert the existing Navajo Nation child support enforcement system to the New Mexico base application. The appropriation is from federal funds. This appropriation is contingent on receiving written approval from the federal funding agency.

(13) LABOR DEPARTMENT: 12,500.0

12,500.0

To replace the current unemployment tax collection system with a client server-based distributed processing system for expenditure in fiscal year 2003 through fiscal year 2006. The appropriation is from federal Reed Act and federal Economic Security Recovery Act of 2001 funds. Funds shall be released incrementally by phase after certification by the chief information officer of successful completion of prior phases. The labor department shall provide monthly written reports to the state chief information officer and to the legislative finance committee. This appropriation is contingent on receiving written approval from the federal funding agency.

(14) LABOR DEPARTMENT: 1,500.0

1,500.0

To implement additional enhancements to a client server-based distributed processing system for handling unemployment tax claims for expenditure in fiscal year 2003 through fiscal year 2006. The appropriation is from federal Reed Act and federal Economic Security Recovery Act of 2001 funds. Funds shall be released incrementally by phase after certification by the chief information officer of successful completion of prior phases. The labor department shall provide monthly written reports to the state chief information officer and to the legislative finance committee. This appropriation is contingent on receiving written approval from the federal funding agency.

(15) LABOR DEPARTMENT:

600.0

600.0

To replace a document scanning system utilized for unemployment tax administration for expenditure in fiscal year 2003 through fiscal year 2006. The appropriation is from federal Reed Act and federal Economic Security Recovery Act of 2001 funds. Funds shall be released incrementally by phase after certification by the chief information officer of successful completion of prior phases. The labor department shall provide monthly written reports to the state chief information officer and to the legislative finance committee. This appropriation is contingent on receiving written approval from the federal funding agency.

(16) DEPARTMENT OF HEALTH:

500.0

500.0

To complete implementation of the integrated client data system. The system shall comply with the federal Health Insurance Portability and Accountability Act. The department of health is encouraged to reduce reliance on contractors and shall train internal information technology staff to maintain and support the system, apply best practices in the procurement of hardware that adheres to state technical standards and submit a plan detailing the cost of the software, hardware, wiring, data conversion, training, et cetera, to the legislative finance committee and to the state chief information officer. The department of health shall provide monthly written reports to the state chief information officer and to the legislative finance committee. The department of health is authorized to transfer funds from this project to other projects to comply with the federal Health Insurance Portability and Accountability Act. The department of finance and administration and the state chief information officer will ensure that, prior to release of funds, appropriate procurement rules are followed, including the use of a request for proposals for information technology professional services and products.

(17) DEPARTMENT OF HEALTH:

1,500.0

1,500.0

To continue the implementation of a single, integrated hospital administration system at the Las Vegas medical center and the Los Lunas medical center and for up to eleven FTE. The system shall comply with the federal Health Insurance Portability and Accountability Act. The department of health is encouraged to reduce reliance on contractors, shall train internal information technology staff to maintain and support the system, apply best practices in the procurement of hardware that adheres to state technical standards and submit a plan detailing the cost of the software, hardware, wiring, data conversion, training, et cetera, to the legislative finance committee and to the state chief information officer. The department of health shall provide monthly written reports to the state chief information officer and to the legislative finance

thousand two hundred nine dollars (\$98,209); and to provide salary increases pursuant to the provisions of Section 34-1-9 NMSA 1978 to the chief justice of the supreme court; the chief judge of the court of appeals; judges of the court of appeals, district courts, metropolitan courts and magistrate courts and child support hearing officers and special commissioners;

(2) five hundred five thousand four hundred dollars (\$505,400) to provide judicial permanent employees whose salaries are not set by statute with a two percent salary increase;

(3) fourteen thousand eight hundred dollars (\$14,800) to provide salary increases for district attorneys as follows: district attorneys who serve in a district that does not include a class A county shall receive an annual salary of eighty-four thousand nine hundred fifty-three dollars (\$84,953) and district attorneys who serve in a district that includes a class A county shall receive an annual salary of eighty-nine thousand four hundred twenty-five dollars (\$89,425);

(4) three hundred seventy-six thousand seven hundred dollars (\$376,700) to provide all district attorney permanent employees, other than elected district attorneys, with a two percent salary increase;

(5) three million eight hundred seventy-three thousand two hundred dollars (\$3,873,200) to provide incumbents in agencies governed by the Personnel Act with a ~~two percent~~ salary increase;

(6) three hundred eighty-five thousand five hundred dollars (\$385,500) to provide executive exempt employees, including attorney general employees and workers' compensation judges, with a two percent salary increase;

(7) three hundred thirty thousand seven hundred dollars (\$330,700) to provide

commissioned officers of the New Mexico state police division of the department of public safety with a two percent salary step increase in accordance with the New Mexico state police career pay system;

(8) ninety-one thousand four hundred dollars (\$91,400) to provide teachers in the department of health, corrections department, children, youth and families department and commission for the blind with a two percent salary increase; and

(9) eighty-three thousand seven hundred dollars (\$83,700) to provide permanent legislative employees, including permanent employees of the legislative council service, legislative finance committee, legislative education study committee, legislative maintenance department, the house and senate, and house and senate leadership staff with a two percent salary increase.

B. Fifteen million four hundred nineteen thousand one hundred dollars (\$15,419,100) is appropriated from the general fund to the commission on higher education for expenditure in fiscal year 2004 to provide faculty and staff of four- and two-year post-secondary educational institutions with a two and one-half percent salary increase. The salary increase shall be effective the first full pay period after July 1, 2003.

C. 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 the general fund appropriations in the General Appropriation Act of 2003. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund.

D. 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 2003, 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 2004. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the appropriate fund.

Section 9. ADDITIONAL FISCAL YEAR 2003 BUDGET ADJUSTMENT AUTHORITY.--During fiscal year 2003, subject to review and approval by the department of finance and administration, in addition to the budget adjustment authority granted in Section 9, Chapter 4, Laws 2002 (1st E.S.) and pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978:

A. the New Mexico compilation commission may request budget increases from other state funds for publishing costs associated with subscriptions, supreme court opinions and other publications;

B. the judicial standards commission may request category transfers up to twenty-two thousand dollars (\$22,000) from any category to the contractual services category;

C. the court of appeals may request category transfers up to thirty-five thousand dollars (\$35,000) from the contractual services category to the personal services and employee benefits category;

D. the supreme court may request category transfers up to twenty-five thousand dollars (\$25,000) from the contractual services category to the personal services and employee benefits category;

E. the administrative office of the courts may request budget increases from other state funds, including the municipal court automation fund, in amounts not to exceed a total of four hundred thousand dollars (\$400,000) and for the magistrate and metropolitan court capital fund in amounts not to exceed a total of forty-four thousand six hundred dollars (\$44,600); and the administrative support program of the administrative office of the courts may request category transfers up to sixty-eight thousand dollars (\$68,000) from the contractual services category to the personal services and employee benefits category to cover the costs of the juvenile accountability incentive block grant unfunded portion of the drug court coordinator's salary and to cover the cost associated with the revision of the district court clerks' manual;

F. the supreme court building commission may request transfers up to six thousand four hundred dollars (\$6,400) from the contractual services category to the personal services and employee benefits category;

G. the first judicial district court may request category transfers up to fifty thousand dollars (\$50,000) from the contractual services category to the personal services and employee benefits category;

H. the second judicial district court may request budget increases from internal services funds/interagency transfers and other state funds for pretrial services and the metropolitan criminal justice coordinating council program; and may request category transfers up to one hundred thousand dollars (\$100,000) from the contractual services category to the personal services and employee benefits category;

I. the third judicial district court may request category transfers from the contractual services category to the personal services and employee benefits category for water litigation, mediation and child support hearings; and may request budget increases from internal services funds/interagency transfers and other state funds for drug courts;

J. the fourth judicial district court may request category transfers up to four thousand five hundred dollars (\$4,500) from any category to the contractual services category for payment of audit services;

K. the sixth judicial district court may request category transfers up to twenty-five thousand dollars (\$25,000) from the personal services and employee benefits category to the contractual services category for payment of judges pro tempore;

L. the ninth judicial district court may request budget increases from internal services funds/interagency transfers and other state funds for reimbursed expenses;

M. the eleventh judicial district court may request budget increases from internal services funds/interagency transfers and other state funds for drug courts;

N. the twelfth judicial district court may request category transfers up to ten thousand dollars (\$10,000) from any category to the contractual services category for payment of audit services; may request category transfers up to ten thousand dollars (\$10,000) from the personal services and employee benefits category to the contractual services category for juvenile drug court; and may request budget increases from internal services funds/interagency transfers and other state funds for reimbursed expenses;

O. the thirteenth judicial district court may request category transfers up to sixteen thousand dollars (\$16,000) from the contractual services category to the other costs category for a telephone system;

P. the Bernalillo county metropolitan court may request category transfers up to seventy-five thousand dollars (\$75,000) from the contractual services category to the personal services and employee benefits category for projected shortfalls;

Q. the sixth judicial district attorney may request category transfers up to thirty thousand dollars (\$30,000) from the contractual services category to the personal services and employee benefits category; and may request budget increases from internal services funds/interagency transfers and other state funds for funds received from any political subdivisions of the state or from Indian tribes;

R. the seventh judicial district attorney may request transfers up to ten thousand dollars (\$10,000) from any category to the contractual services category to pay costs associated with a contract prosecutor;

S. the ninth judicial district attorney may request category transfers up to two thousand dollars (\$2,000) from the other costs category to the contractual services category to pay costs associated with the audit;

T. the tenth judicial district attorney may request category transfers up to two thousand dollars (\$2,000) from the other costs category to the contractual services category to pay costs associated with the audit;

U. the eleventh judicial district attorney-Gallup office may request budget increases from internal services funds/interagency transfers and other state funds for funds received from any political subdivisions of the state or from Indian tribes;

V. the twelfth judicial district attorney may request budget increases from internal services funds/interagency transfers and other state funds for funds received from any political subdivisions of the state or from Indian tribes; and may request category transfers up to thirty-three thousand dollars (\$33,000) from any

category to the contractual services category to pay costs associated with a contract prosecutor and audit;

W. the thirteenth judicial district attorney may request budget increases from internal service funds/interagency transfers and other state funds for funds received from any political subdivisions of the state or from Indian tribes; and may request category transfers;

X. the taxation and revenue department may request budget increases up to four hundred eighty-five thousand dollars (\$485,000) from delinquent property tax revenue;

Y. the department of finance and administration may request program transfers; may request category transfers; and may request budget increases from internal services funds/interagency transfers;

Z. the state investment council may request category transfers up to three hundred thousand dollars (\$300,000) of the money appropriated for investment manager fees in the contractual services category;

AA. the general services department may request budget increases from internal services funds/interagency transfers; and the business office space management and maintenance services program of the general services department may request budget increases from internal services funds/interagency transfers up to nine hundred thousand dollars (\$900,000) provided the public employees retirement association building is purchased by the state during fiscal year 2003 and the building services division of the general services department collects rent from the building's occupants;

BB. the public defender department may request budget increases from cash balances; and may request category transfers;

CC. the governor may request category transfers;

DD. the lieutenant governor may request category transfers;

EE. the secretary of state may request category transfers up to one hundred thirty-four thousand dollars (\$134,000) from the other costs category to the contractual services category to pay for the state board of education redistricting lawsuit, a voter registration and election management system project manager contract and to repay a board of finance loan;

FF. the board of examiners for architects may request category transfers to and from the contractual services category up to twenty thousand dollars (\$20,000) for contract support for an on-line license renewal system; and may request budget increases from cash balances;

GG. the regulation and licensing department may request category transfers from the contractual services category to any other category up to nineteen thousand dollars (\$19,000) in the New Mexico state board of public accountancy, thirteen thousand dollars (\$13,000) in the board of acupuncture and oriental medicine, three thousand dollars (\$3,000) in the New Mexico athletic commission, twenty thousand dollars (\$20,000) in the New Mexico board of dental health care, two thousand dollars (\$2,000) in the board of landscape architects, eight thousand dollars (\$8,000) in the board of massage therapy, eight thousand dollars (\$8,000) in the board of optometry, five thousand dollars (\$5,000) in the New Mexico state board of psychologist examiners, ten thousand dollars (\$10,000) in the board of social work examiners and seventeen thousand dollars (\$17,000) in the board of thanatopractice to address deficiencies in other categories; may request category transfers up to fifty thousand dollars (\$50,000) in program support from any category to the contractual services category to address deficiencies; and may request program transfers among construction industries and manufactured housing, financial institutions and securities, alcohol and gaming and program support;

HH. the public regulation commission may request category transfers up to two hundred ten thousand dollars (\$210,000) from the contractual services category; and may request budget increases up to three hundred thousand dollars (\$300,000) from the agent's surcharge fund for personal services and employee benefits and other costs associated with the development of the New Mexico insurance portal; and may request program transfers to cover budget shortfalls;

II. the New Mexico board of medical examiners may request category transfers up to twenty-five thousand dollars (\$25,000) to and from the contractual services category to study and make recommendations to streamline and standardize the licensing and credentialing of health care providers; and may request budget increases from cash balances;

JJ. the board of nursing may request budget increases from cash balances up to twenty-five thousand dollars (\$25,000) to study and make recommendations to streamline and standardize licensing and credentialing of nurses;

KK. the state board of licensure for professional engineers and land surveyors may request category transfers to and from the contractual services category up to twenty thousand dollars (\$20,000); and may request budget increases from cash balances;

LL. the New Mexico state racing commission may request category transfers to and from the contractual services category;

MM. the board of veterinary medicine may request category transfers to and from the contractual services category; and may request budget increases from cash balances up to twenty thousand dollars (\$20,000) to pay for court reporting fees and other expenses associated with hearings;

NN. the livestock board may request transfers up to ten thousand dollars (\$10,000) into the administration program to cover potential shortfalls in the personal services and employee benefits category;

OO. the department of game and fish may request program transfers up to two hundred thousand dollars (\$200,000) from the sport hunting and fishing program to the administration program;

PP. the energy, minerals and natural resources department may request program transfers up to twenty thousand dollars (\$20,000) between the healthy ecosystems and voluntary compliance programs to cover shortfalls;

QQ. the New Mexico organic commodity commission may request category transfers up to three thousand dollars (\$3,000) to and from the contractual services category for expenditures related to certification by the United States department of agriculture national organic program and for additional on-site inspections;

RR. the labor department may request budget increases from internal services funds/interagency transfers; may request budget increases up to three hundred fifty thousand dollars (\$350,000) from the public works apprentice and training fund for distribution to the New Mexico apprenticeship programs; and may request category transfers and program transfers to manage funds from the federal Workforce Investment Act as directed by the state workforce development board and local workforce development boards, provided the cumulative effect of the adjustments does not exceed the formula distribution of funds determined by the federal government and the transfer is in compliance with the federal Workforce Investment Act program requirements;

SS. the developmental disabilities planning council may request budget increases up to eighteen thousand dollars (\$18,000) from internal services funds/interagency transfers for additional funding for operation of the information center for New Mexicans with disabilities/babynet; and may request up to fifty thousand dollars (\$50,000) from other state funds to conduct coordinated and collaborative activities with other state agencies and to defray the costs of training and conference expenses;

TT. the department of health may request category transfers to and from the contractual services category; and may request program transfers to meet budget shortfalls;

UU. the department of environment may request program transfers up to five hundred thousand dollars (\$500,000) to cover budget shortfalls;

VV. the health policy commission may request category transfers up to fifty thousand dollars (\$50,000) to the contractual services category to meet mandated

expectations for reviewing and annualizing data and implementing health policy and planning directives and issues;

WW. the corrections department may request budget increases up to three hundred thousand dollars (\$300,000) from internal services funds/interagency transfers and other state funds in the inmate management and control program for costs associated with housing inmates in private facilities;

XX. the department of public safety may request category transfers within the public safety support program to address crime lab accreditation requirements and to expedite testing of cases in the crime lab; and may request budget increases from other state funds to collect reimbursement for damage to state vehicles;

YY. the state highway and transportation department may request category transfers up to one million five hundred eighty-nine thousand four hundred dollars (\$1,589,400) of federal construction program funding to the traffic safety program for alcohol countermeasure programs;

ZZ. the state department of public education may request category transfers up to one hundred sixty-two thousand dollars (\$162,000) from any category to the contractual services category for services associated with the provision of materials for and the administration of the New Mexico high school competency examination; and

AAA. the commission on higher education may request program transfers up to fifty thousand dollars (\$50,000) from the contractual services category of the policy development and institutional financial oversight program to the student financial aid program.

Section 10. CERTAIN FISCAL YEAR 2004 BUDGET ADJUSTMENTS AUTHORIZED.--

A. As used in this section and Section 9 of the General Appropriation Act of 2003:

(1) "budget category" means an item or an aggregation of related items that represents the object of an appropriation. Budget categories include personal services and employee benefits, contractual services, other and other financing uses;

(2) "budget increase" means an approved increase in expenditures by an agency from a specific source;

(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) "program transfer" means an approved transfer of funds from one program of an agency to another program of that agency; and

(5) "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 and except those payments made in accordance with the federal temporary assistance for needy families block grant and the federal Workforce Investment Act of 1998.

B. Pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, those budget adjustments specified in this section are authorized for fiscal year 2004.

C. In addition to the specific category transfers authorized in Subsection E of this section, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services, other and other financing uses.

D. Unless a conflicting budget increase is authorized in Subsection E of this section, an agency with internal services funds/interagency transfers appropriations or other state funds appropriations that collects money in excess of those appropriated may request budget increases in an amount not to exceed five percent of its internal services funds/interagency transfers or other state funds appropriation contained in Section 4 of the General Appropriation Act of 2003. In order to track the five percent transfer limitation, agencies shall report cumulative budget adjustment request totals on each budget adjustment request submitted. The department of finance and administration shall certify agency reporting of these cumulative totals.

E. In addition to the budget adjustment authority otherwise provided in the General Appropriation Act of 2003, the following agencies may request specified budget adjustments:

(1) the New Mexico compilation commission may request budget increases from other state funds for publishing costs associated with subscriptions, supreme court opinions and other publications;

(2) the administrative office of the courts may request transfers up to seventy-six thousand dollars (\$76,000) from any category into the personal services and employee benefits category for a jury project manager to oversee jury initiatives and the court interpreter certification project;

(3) the second judicial district court may request budget increases from internal services funds/interagency transfers, local government, intra-state and other state funds for pretrial services and the metropolitan criminal justice coordinating council;

(4) the Bernalillo county metropolitan court may request budget increases from internal services funds/interagency transfers and other state funds for pretrial services and DWI drug court;

(5) the second judicial district attorney may request budget increases up to seventy-five thousand dollars (\$75,000) from other state funds for attorney bar dues and training; and may request budget increases up to one hundred thousand dollars (\$100,000) from other state funds for personal services and employee benefits;

(6) the eleventh judicial district attorney-Farmington office may request budget increases from internal services funds/interagency transfers and other state funds for funds received from any political subdivisions of the state or from Indian tribes;

(7) the twelfth judicial district attorney may request budget increases from internal services funds/interagency transfers and other state funds for funds received from any political subdivisions of the state or from Indian tribes;

(8) the thirteenth judicial district attorney may request budget increases from internal services funds/interagency transfers and other state funds for funds received from any political subdivisions of the state or from Indian tribes;

(9) the attorney general may request budget increases up to five hundred fifty thousand dollars (\$550,000) in the legal services program from settlement funds;

(10) the motor vehicle program of the taxation and revenue department may request budget increases from other state funds up to one million six hundred thousand dollars (\$1,600,000) from fees for data inquiry access for a training and certification program and security master and data inquiry systems;

(11) the state investment council may request budget increases from other state funds up to two million dollars (\$2,000,000) for investment manager fees and custody fees, provided that this amount may be exceeded if the department of finance and administration approves a certified request from the state investment council that additional increases from other state funds are required for increased management fees and custody fees derived from asset growth and performance; and may request transfers to any other category except that only five hundred thousand dollars (\$500,000) of the money appropriated for investment manager fees in the contractual services category may be transferred;

(12) the public school insurance authority may request budget increases from internal services funds/interagency transfers and other state funds;

(13) the retiree health care authority may request budget increases from internal services funds/interagency transfers and other state funds;

(14) the general services department may request budget increases for internal services funds/interagency transfers if it collects revenue in excess of appropriated levels;

(15) the educational retirement board may request budget increases from other state funds up to two million eight hundred thousand dollars (\$2,800,000) for manager fees and custody fees, provided that this amount may be exceeded if the department of finance and administration approves a certified request from the educational retirement board that additional increases from other state funds are required for increased management fees and custody fees derived from asset growth and performance; and may request category transfers, except that funds authorized for investment manager fees and custody services within the contractual services category of the administrative division of the educational retirement board shall not be transferred;

(16) the public defender department may request budget increases from cash balances;

(17) the public employees retirement association may request budget increases from other state funds for manager fees and custody fees, provided that the department of finance and administration approves a certified request from the public employees retirement association that additional increases from other state funds are required for increased management fees and custody fees derived from asset growth and performance; may request category transfers, except that funds authorized for investment manager fees within the contractual services category of the administrative division of the public employees retirement association and for custody services within the contractual services category of the administrative division of the public employees retirement association shall not be transferred; and may request budget increases from internal services funds/interagency transfers and other state funds; and the maintenance division of the public employees retirement association may request budget increases from other state funds to meet emergencies or unexpected physical plant failures that might impact the health and safety of workers;

(18) the state commission of public records may request budget increases from revenue generated through the production and sale of publications in the New Mexico register to the revolving fund;

(19) the New Mexico magazine program of the tourism department may request budget increases from other state funds from earnings of sales; and the New Mexico clean and beautiful program of the tourism department may request budget increases from the special revenue fund for grants to communities for litter reduction programs;

(20) the economic development department may request program transfers up to five hundred thousand dollars (\$500,000) to assist New Mexico's communities with their economic development strategic planning and marketing needs;

(21) the state fire marshal of the public regulation commission may request budget increases from the firefighter training academy use fee fund to defray operating and capital costs of the firefighter training academy;

(22) the board of medical examiners may request budget increases from other state funds;

(23) the office of cultural affairs may request budget increases from internal services funds/interagency transfers and from other state funds for archaeological services; and may request transfers between programs;

(24) the department of game and fish may request budget increases from internal services funds/interagency transfers for emergencies;

(25) the healthy ecosystems program of the energy, minerals and natural resources department may request budget increases from funds received in the oil and gas reclamation fund to close abandoned wells; the healthy ecosystems, outdoor recreation and energy efficiency programs of the energy, minerals and natural resources department may request budget increases from the New Mexico youth conservation corps fund for projects approved by the New Mexico youth conservation corps commission;

(26) the commission for the status of women may request budget increases from other state funds for the statutorily mandated recognition program for women;

(27) the commission for the deaf and hard-of-hearing persons may request budget increases from internal services funds/interagency transfers for a joint powers agreement with the commission for the blind and the general services department for the telecommunication access fund;

(28) the labor department may request budget increases and program transfers in order to manage funds from the Workforce Investment Act as directed by the state workforce development board and local workforce development boards provided that the cumulative effect of the adjustments does not exceed the formula distribution of funds determined by the federal government and the transfer is in compliance with federal Workforce Investment Act program requirements;

(29) the division of vocational rehabilitation may request budget increases from other state funds to maintain services for clients;

(30) the department of health may request budget increases from other state funds and internal services funds/interagency transfers for facilities, institutions, community programs and the traumatic brain injury fund, including laboratories, to maintain adequate services for clients, to maintain the buildings and grounds of the former Los Lunas medical center and to fund investigations pursuant to the Caregivers Screening Act;

(31) the department of environment may request budget increases from other state funds to budget responsible-party payments, from the corrective action fund to pay claims and from the hazardous waste emergency fund to meet emergencies;

(32) the corrections department may request budget increases from internal service funds/interagency transfers in excess of the five percent limitation contained herein to implement the transition center programs in conjunction with the department of health; may request budget increases from internal services funds/interagency transfers in excess of the five percent limitation contained herein for costs associated with the inmate forestry work camp; and may request program transfers if the cumulative effect of a requested program transfer, together with all program transfers previously requested and approved pursuant to this subsection, will not increase or decrease the total annual appropriation to a program from any funding source by more than five percent;

(33) the department of public safety may request budget increases from state forfeitures and forfeiture balances to address the enforcement of the Controlled Substances Act; and

(34) the deficiencies corrections unit may request budget increases for project management expenses pursuant to the Public School Capital Outlay Act.

F. The department of military affairs, the department of public safety and the energy, minerals and natural resources department may request budget increases from the general fund as required by an executive order declaring a disaster or emergency.

Section 11. TRANSFER AUTHORITY.--If revenues and transfers to the general fund, excluding transfers to the general fund operating reserve, appropriation contingency fund, tax stabilization reserve and public school state-support reserve, as of the end of fiscal year 2003 are not sufficient to meet appropriations, the governor, with state board of finance approval, may transfer at the end of that year the amount necessary to meet the year's obligations from the unencumbered balance remaining in the general fund operating

reserve in a total not to exceed one hundred thirty million dollars (\$130,000,000).

Section 12. **SEVERABILITY.**--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE BILLS 2, 3, 4, 5, 6 AND 9,

AS AMENDED, SIGNED MARCH 21, 2003

CHAPTER 77

CHAPTER 77, LAWS 2003

AN ACT

RELATING TO TAXATION; CREATING THE BLUE RIBBON TAX REFORM COMMISSION; PROVIDING FOR ITS MEMBERSHIP AND DUTIES; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. BLUE RIBBON TAX REFORM COMMISSION CREATED--MEMBERSHIP--APPOINTMENT--DUTIES.--

A. The "blue ribbon tax reform commission" is created and shall function from the date of its appointment until September 1, 2003.

B. The commission shall consist of twenty-three members appointed as follows:

(1) five members of the house of representatives shall be appointed by the speaker of the house of representatives and five members of the senate shall be appointed by the president pro tempore of the senate. Members shall be appointed from each house so as to give the two major political parties in each house the same proportional representation on the commission as prevails in each house; however, in no event shall either party have less than one member from each house on the commission;

(2) two public members shall be appointed by the speaker of the house of representatives and the president pro tempore of the senate; and

(3) eleven public members shall be appointed by the governor to represent a broad range of views and expertise on taxation issues. These members shall include at least one member to represent municipal governments, at least one member to represent county governments and at least one member to represent Native American tribes, pueblos and nations.

C. Appointments to the commission shall be made no later than twenty days after the effective date of this act. The governor, in consultation with the speaker of the house of representatives and the president pro tempore of the senate, shall appoint a chair from among the members of the commission within fourteen days of the appointment of the commission. The commission may elect such other officers as it deems necessary to carry out its duties.

D. The commission shall meet at the call of the chair as necessary to carry out its duties, but no less than twice a month. The first meeting shall be held no later than May 1, 2003.

E. Three absences from meetings of the commission shall constitute grounds for removal of a member of the commission. Upon the request of the chair of the commission, the appointing authority shall replace the public member who has failed to attend three meetings of the commission.

F. A majority of the members appointed constitutes a quorum for the transaction of business. The support of a majority of the members appointed is required for adoption of any action by the commission; provided, however, that the final report of the commission, including its recommendations and proposed legislation, must have the support of a majority of the legislative members.

G. The commission shall develop recommendations for reform of New Mexico's tax laws to establish a balanced tax system that provides maximum economic development benefits and maintains necessary government services at an appropriate level. To carry out this task, the commission shall examine New Mexico's tax system, identify its strengths and deficiencies and consider a broad range of improvements that could be made to modernize the tax system and make it more conducive to economic growth. The commission shall examine the personal income tax reductions approved during the first session of the forty-sixth legislature and determine if any changes are necessary and the structure of any such changes. The commission shall submit a report of its findings, including specific recommendations and proposed legislation, to the governor and the legislative council no later than September 1, 2003.

H. The commission shall hire or contract for appropriate staff. Staff shall assist the commission as directed by the chair, including conducting interviews with parties that wish to express their views to the commission, and synthesizing this information for the commission. The commission may request assistance from the legislative council service and the taxation and revenue department.

I. Members of the commission shall be reimbursed for per diem and mileage expenses as provided for public officers in the Per Diem and Mileage Act.

Section 2. APPROPRIATION.--Two hundred thousand dollars (\$200,000) is appropriated from the general fund to the legislative council service for expenditure in fiscal years 2003 and 2004 to carry out the provisions of this act, including staff salaries and reimbursement of the per diem and mileage expenses of the blue ribbon tax reform commission. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund. Payments from the appropriation shall be made upon vouchers signed by the director of the legislative council service or the director's authorized representative.

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

HOUSE BILL 168, AS AMENDED,

WITH EMERGENCY CLAUSE,

SIGNED MARCH 21, 2003

CHAPTER 78

CHAPTER 78, LAWS 2003

AN ACT

RELATING TO PROPERTY TAXATION; APPLYING A LIMITATION ON INCREASES IN VALUE FOR PROPERTY TAXATION PURPOSES TO SINGLE-FAMILY DWELLINGS OCCUPIED BY LOW-INCOME DISABLED PERSONS; AMENDING A SECTION OF THE PROPERTY TAX CODE.

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

Section 1. Section 7-36-21.3 NMSA 1978 (being Laws 2000, Chapter 21, Section 1, as amended) is amended to read:

"7-36-21.3. LIMITATION ON INCREASE IN VALUE FOR SINGLE-FAMILY DWELLINGS OCCUPIED BY LOW-INCOME OWNERS SIXTY-FIVE YEARS OF AGE OR OLDER OR DISABLED.--

A. For the 2001 and subsequent tax years the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is sixty-five years of age or older and whose modified gross income, as defined in the Income Tax Act, for the prior taxable year did not exceed the greater of eighteen thousand dollars (\$18,000) or the amount calculated pursuant to Subsection C of this section shall not be greater than the valuation of the property for property taxation purposes in the:

(1) 2001 tax year;

(2) year in which the owner has his sixty-fifth birthday, if that is after 2001; or

(3) tax year following the tax year in which an owner who turns sixty-five or is sixty-five years of age or older first owns and occupies the property, if that is after 2001.

B. For the 2003 and subsequent tax years, the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is disabled and whose modified gross income, as defined in the Income Tax Act, for the prior taxable year did not exceed the greater of eighteen thousand dollars (\$18,000) or the amount calculated pursuant to Subsection C of this section shall not be greater than the valuation of the property for property taxation purposes in the:

(1) 2003 tax year;

(2) year in which the owner is determined to be disabled, if that is after 2003; or

(3) tax year following the tax year in which an owner who is disabled or who is determined in that year to be disabled first owns and occupies the property, if that is after 2003.

C. The limitation of value specified in Subsections A and B of this section shall be applied in a tax year in which the owner claiming entitlement files with the county assessor an application for the limitation on a form furnished to him by the assessor. The application form shall be designed by the department and shall provide for proof of age or disability, occupancy and income eligibility for the tax year for which application is made.

D. For the 2002 tax year and each subsequent tax year the maximum amount of modified gross income in Subsections A and B of this section shall be

adjusted to account for inflation. The department shall make the adjustment by multiplying the maximum amount for tax year 2000 by a fraction, the numerator of which is the consumer price index ending during the prior tax year and the denominator of which is the consumer price index ending in tax year 2000. The result of the multiplication shall be rounded down to the nearest one hundred dollars (\$100) except that if the result would be an amount less than the corresponding amount for the preceding tax year, then no adjustment shall be made. For purposes of this subsection, "consumer price index" means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30. The department shall publish annually the amount determined by the calculation and distribute it to each county assessor no later than December 1 of each tax year.

E. The limitation of value specified in Subsections A and B of this section does not apply to:

(1) a change in valuation resulting from any physical improvements made to the property during the year immediately prior to the tax year or a change in the permitted use or zoning of the property during the year immediately prior to the tax year; or

(2) a residential property in the first tax year that is valued for property taxation purposes.

F. As used in this section, "disabled" means a person who has been determined to be blind or permanently disabled with medical improvement not expected pursuant to 42 USCA 421 for purposes of the federal Social Security Act or is determined to have a permanent total disability pursuant to the Workers' Compensation Act."

Section 2. APPLICABILITY.--The provisions of this act apply to property tax year 2003 and subsequent property tax years.

HOUSE BILL 73, AS AMENDED

CHAPTER 79

CHAPTER 79, LAWS 2003

AN ACT

RELATING TO HEALTH; ALLOWING CERTAIN MINORS TO DONATE BLOOD OR BLOOD COMPONENTS WITHOUT PARENTAL CONSENT; PROHIBITING MINORS

FROM RECEIVING COMPENSATION FOR A DONATION OF BLOOD OR BLOOD COMPONENTS.

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

Section 1. BLOOD DONATION--MINORS.--

A. A minor who is at least seventeen years of age may donate blood to a licensed, accredited or approved blood bank, storage facility or hospital without parental consent.

B. A minor shall not receive monetary payment from a licensed, accredited or approved blood bank, storage facility or hospital for a donation of blood or blood components.

HOUSE BILL 152

CHAPTER 80

CHAPTER 80, LAWS 2003

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; PROVIDING FOR RETURN TO EMPLOYMENT; CONTINUING RETIREMENT BENEFITS.

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

Section 1. Section 22-11-25.1 NMSA 1978 (being Laws 2001, Chapter 283, Section 2) is amended to read:

"22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED--ADMINISTRATIVE UNIT CONTRIBUTIONS.--

A. Except as provided in Subsections B and E of this section beginning January 1, 2002 and continuing until January 1, 2012, a retired member may begin employment at a local administrative unit and shall not be required to suspend retirement benefits if the member has not been employed as an employee or independent contractor by a local administrative unit for at least twelve consecutive months from the date of retirement to the commencement of employment or reemployment with a local administrative unit. If the retired member returns to employment without first completing twelve consecutive months of retirement, the retired member shall remove himself from retirement.

B. A retired member who was retired on or before January 1, 2001 and who has not since suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act and is reemployed by a local administrative unit may continue employment at the local administrative unit and shall not be required to suspend retirement benefits.

C. A retired member who returns to employment during retirement pursuant to Subsection A or B of this section is entitled to continue to receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's reemployment with a local administrative unit.

D. A retired member who returns to employment during retirement pursuant to Subsection A or B of this section shall not make contributions to the fund as specified in the Educational Retirement Act; however, the local administrative unit's contributions as specified in that act shall be paid to the fund as if the retired member was a non-retired employee.

E. Beginning July 1, 2003 and continuing until January 1, 2012, a retired member who retired on or before January 1, 2001 and who has not been employed as an employee or independent contractor by a local administrative unit for at least ninety days may begin employment at a local administrative unit without suspending retirement benefits if the retired member was not employed by a local administrative unit for an additional twelve or more consecutive months after the initial date of retirement; provided that the ninety-day period shall not include any part of a summer or other scheduled break or vacation period."

HOUSE BILL 22, AS AMENDED

CHAPTER 81

CHAPTER 81, LAWS 2003

AN ACT

RELATING TO JUDICIAL RETIREMENT; AMENDING THE JUDICIAL RETIREMENT ACT AND THE MAGISTRATE RETIREMENT ACT TO PROVIDE THAT METROPOLITAN COURT JUDGES BE COVERED PURSUANT TO THE JUDICIAL RETIREMENT ACT.

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

Section 1. Section 10-12B-2 NMSA 1978 (being Laws 1992, Chapter 111, Section 2) is amended to read:

"10-12B-2. DEFINITIONS.--As used in the Judicial Retirement Act:

A. "association" means the public employees retirement association provided for in the Public Employees Retirement Act;

B. "board" means the retirement board provided for in the Public Employees Retirement Act;

C. "current judge or justice" means a judge or justice who occupied such an office on July 1, 1980 but who elected to be covered under the provisions of the retirement plan in effect at that time;

D. "dependent child" means a natural or adopted child who is physically or mentally incapable of financial self-support, regardless of age;

E. "educational retirement system" means the retirement system provided for in the Educational Retirement Act;

F. "effective date of retirement" means the first day of the month following the month in which the member met all requirements for retirement;

G. "former judge or justice" means a judge or justice who occupied such an office prior to July 1, 1980 but who had ceased to hold such an office prior to that date and who elected to be excluded from the provisions of the Judicial Retirement Act;

H. "former member" means a person no longer in office who was previously covered pursuant to the provisions of Sections 10-12-1 through 10-12-18 NMSA 1978, but who has not retired pursuant to the provisions of the Judicial Retirement Act and who has received a refund of member contributions pursuant to the provisions of Sections 10-12B-1 through 10-12B-19 NMSA 1978;

I. "fund" means the judicial retirement fund;

J. "judge" means a judge of the metropolitan court, district court or court of appeals of New Mexico;

K. "justice" means a justice of the supreme court of New Mexico;

L. "member" means any judge or justice who is in office and covered pursuant to the provisions of the Judicial Retirement Act, or any person no longer in office who was previously a judge or justice covered pursuant to the provisions of the

Judicial Retirement Act, who has not retired and who has not received a refund of member contributions from the fund;

M. "member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited thereto;

N. "minor child" means a natural or adopted child who has not reached his eighteenth birthday and who has not been emancipated by marriage or otherwise;

O. "new judge or justice" means:

(1) a judge or justice who first occupied such an office after July 1, 1980; or

(2) a judge or justice who occupied such an office on or before July 1, 1980 and who has elected to be covered under the provisions of the Judicial Retirement Act;

P. "pension" means a series of monthly payments to a retired member or survivor beneficiary pursuant to the provisions of the Judicial Retirement Act;

Q. "refund beneficiary" means a person designated by the member, in writing in the form prescribed by the association, as the person who would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable, or who would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

R. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from one state system or the educational retirement system;

S. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

T. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered; provided that salary does not include overtime pay; allowances for housing, clothing, equipment or travel; payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment; and

any other form of remuneration not specifically designated by law as included in salary pursuant to the provisions of the Judicial Retirement Act;

U. "state system" means the retirement programs provided pursuant to the provisions of the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act;

V. "surviving spouse" means the spouse to whom the member was married at the time of the member's death;

W. "survivor beneficiary" means a person who receives a pension or who has been designated to be paid a pension as a result of the death of a member or retired member; and

X. "years of service" means a period of time beginning on the date a person commences to hold office as a judge or justice because of appointment or election and ending on the date a person ceases to hold office as a judge or justice because of expiration of the judge's or justice's term, voluntary resignation, death or disability and shall include any fractions of years of service."

Section 2. Section 10-12B-3 NMSA 1978 (being Laws 1992, Chapter 111, Section 3, as amended) is amended to read:

"10-12B-3. JUDICIAL RETIREMENT FUND ESTABLISHED--ADMINISTRATION OF FUND--ACCOUNTING FUNDS.--

A. There is established in the state treasury the "judicial retirement fund". The fund is comprised of money received from docket and jury fees of metropolitan courts, district courts, the court of appeals and the supreme court, employer and employee contributions and any investment earnings on fees and contributions. The board is the trustee of the fund and shall administer and invest the fund. Investment of the fund shall be conducted pursuant to the provisions of the Public Employees Retirement Act. The provisions of the Judicial Retirement Act shall be administered by the board. The board is authorized to promulgate rules. Expenses related to the investment of the fund and administration of the Judicial Retirement Act shall be paid from the fund.

B. For purposes of this section, the accounting funds shall be known as the "member contribution fund", "employer's accumulation fund", "retirement reserve fund" and "income fund". The maintenance of separate accounting funds shall not require the actual segregation of the assets of the fund.

C. The accounting funds provided for in this section are trust funds and shall be used only for the purposes provided for in the Judicial Retirement Act.

D. The member contribution fund is the accounting fund in which shall be accumulated contributions of members and from which shall be made refunds and transfers of accumulated member contributions as provided in the Judicial Retirement Act. The member's court shall cause member contributions to be deducted from the salary of the member and shall remit the deducted member contributions to the association in accordance with procedures and schedules established by the association. The association may assess an interest charge and a penalty charge on any late remittance. Each member shall be deemed to consent and agree to the deductions made and provided for in this section. Contributions by members shall be credited to the members' individual accounts in the member contribution fund. A member's accumulated member contributions shall be transferred to the retirement reserve fund when a pension becomes payable.

E. The employer's accumulation fund is the accounting fund in which shall be accumulated the contributions paid by the state through the member's court. The state, through the member's court, shall remit its contributions to the association in accordance with procedures and schedules established by the association. The board may assess an interest charge and a penalty charge on any late remittance.

F. The retirement reserve fund is the accounting fund from which shall be paid all pensions to retired members and survivor beneficiaries and all residual refunds to refund beneficiaries of retired members and survivor beneficiaries.

G. Each year, following receipt of the report of the annual actuarial valuation, the excess, if any, of the reported actuarial present value of pensions being paid and likely to be paid to retired members and survivor beneficiaries and residual refunds likely to be paid to refund beneficiaries of retired members and survivor beneficiaries over the balance in the retirement reserve fund shall be transferred to the retirement reserve fund from the employer's accumulation fund.

H. The income fund is the accounting fund to which shall be credited all interest, dividends, rents and other income from investments of the fund, all gifts and bequests, all unclaimed member contributions and all other money the disposition of which is not specifically provided for in the Judicial Retirement Act. Expenses related to the administration of the Judicial Retirement Act shall be paid for from the income fund.

I. The association shall at least annually distribute all or a portion of the balance in the income fund to the member contribution fund, the retirement reserve fund and the employer's accumulation fund. Distribution rates shall be determined by the board and may vary for the respective accounting funds."

Section 3. Section 10-12B-11 NMSA 1978 (being Laws 1992, Chapter 111, Section 11) is amended to read:

"10-12B-11. EMPLOYER CONTRIBUTIONS.--

A. The member's court shall contribute nine percent of salary for each member in office to the fund.

B. Thirty-eight dollars (\$38.00) from each civil case docket fee paid in the district court, twenty-five dollars (\$25.00) from each civil docket fee paid in metropolitan court and ten dollars (\$10.00) from each jury fee paid in metropolitan court shall be paid by the court clerk to the employer's accumulation fund."

Section 4. Section 10-12C-2 NMSA 1978 (being Laws 1992, Chapter 118, Section 2) is amended to read:

"10-12C-2. DEFINITIONS.--As used in the Magistrate Retirement Act:

A. "association" means the public employees retirement association provided for in the Public Employees Retirement Act;

B. "board" means the retirement board provided for in the Public Employees Retirement Act;

C. "dependent child" means a natural or adopted child who is physically or mentally incapable of financial self-support, regardless of age;

D. "educational retirement system" means the retirement system provided for in the Educational Retirement Act;

E. "effective date of retirement" means the first day of the month following the month in which the member met all requirements for retirement;

F. "former member" means a person no longer in office who was previously covered pursuant to the provisions of Sections 10-12A-1 through 10-12A-13 NMSA 1978, but who has not retired pursuant to the provisions of the Magistrate Retirement Act and who has received a refund of member contributions pursuant to the provisions of Sections

10-12C-1 through 10-12C-18 NMSA 1978;

G. "fund" means the magistrate retirement fund;

H. "magistrate" means a magistrate judge;

I. "member" means any magistrate who is in office and covered pursuant to the provisions of the Magistrate Retirement Act, or any person no longer in office who was previously a magistrate covered pursuant to the provisions of the Magistrate Retirement Act, who has not retired and who has not received a refund of member contributions from the fund;

J. "member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited thereto;

K. "minor child" means a natural or adopted child who has not reached his eighteenth birthday and who has not been emancipated by marriage or otherwise;

L. "pension" means a series of monthly payments to a retired member or survivor beneficiary pursuant to the provisions of the Magistrate Retirement Act;

M. "refund beneficiary" means a person designated by the member, in writing in the form prescribed by the association, as the person who would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable, or as the person who would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

N. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from one state system or the educational retirement system;

O. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

P. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered; provided that salary does not include overtime pay; allowances for housing, clothing, equipment or travel; payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment; and any other form of remuneration not specifically designated by law as included in salary pursuant to the provisions of the Magistrate Retirement Act;

Q. "state system" means the retirement programs provided pursuant to the provisions of the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act;

R. "surviving spouse" means the spouse to whom the member was married at the time of the member's death;

S. "survivor beneficiary" means a person who receives a pension or who has been designated to be paid a pension as a result of the death of a member or retired member; and

T. "years of service" means a period of time beginning on the date a person commences to hold office as a magistrate because of appointment or election and ending on the date a person ceases to hold office as a magistrate because of expiration of the magistrate's term, voluntary resignation, death or disability and shall include any fractions of years of service."

Section 5. Section 10-12C-3 NMSA 1978 (being Laws 1992, Chapter 118, Section 3, as amended) is amended to read:

"10-12C-3. MAGISTRATE RETIREMENT FUND ESTABLISHED--

ADMINISTRATION OF FUND--ACCOUNTING FUNDS.--

A. There is established in the state treasury the "magistrate retirement fund". The fund is comprised of money received from docket fees of magistrate courts, employer and member contributions and any investment earnings on fees and contributions. The board is the trustee of the fund and shall administer and invest the fund. Investment of the fund shall be conducted pursuant to the provisions of the Public Employees Retirement Act. The provisions of the Magistrate Retirement Act shall be administered by the board. The board is authorized to promulgate rules. Expenses related to the investment of the fund and administration of the Magistrate Retirement Act shall be paid from the fund.

B. For purposes of this section, the accounting funds shall be known as the "member contribution fund", "employer's accumulation fund", "retirement reserve fund" and "income fund". The maintenance of separate accounting funds shall not require the actual segregation of the assets of the fund.

C. The accounting funds provided for in this section are trust funds and shall be used only for the purposes provided for in the Magistrate Retirement Act.

D. The member contribution fund is the accounting fund in which shall be accumulated contributions of members and from which shall be made refunds and transfers of accumulated member contributions as provided in the Magistrate Retirement Act. The member's court shall cause member contributions to be deducted from the salary of the member and shall remit the deducted member contributions to the association in accordance with procedures and schedules established by the association. The association may assess an interest charge and a penalty charge on any late remittance. Each member shall be deemed to consent and agree to the deductions made and provided for in this section. Contributions by members shall be credited to the members' individual accounts in the member contribution fund. A member's accumulated member contributions shall be transferred to the retirement reserve fund when a pension becomes payable.

E. The employer's accumulation fund is the accounting fund in which shall be accumulated the contributions paid by the state through the administrative office of

the courts. The state, through the administrative office of the courts, shall remit its contributions to the association in accordance with procedures and schedules established by the association. The board may assess an interest charge and a penalty charge on any late remittance.

F. The retirement reserve fund is the accounting fund from which shall be paid all pensions to retired members and survivor beneficiaries and all residual refunds to refund beneficiaries of retired members and survivor beneficiaries.

G. Each year, following receipt of the report of the annual actuarial valuation, the excess, if any, of the reported actuarial present value of pensions being paid and likely to be paid to retired members and survivor beneficiaries and residual refunds likely to be paid to refund beneficiaries of retired members and survivor beneficiaries over the balance in the retirement reserve fund shall be transferred to the retirement reserve fund from the employer's accumulation fund.

H. The income fund is the accounting fund to which shall be credited all interest, dividends, rents and other income from investments of the fund, all gifts and bequests, all unclaimed member contributions and all other money the disposition of which is not specifically provided for in the Magistrate Retirement Act. Expenses related to the administration of the Magistrate Retirement Act shall be paid for from the income fund.

I. The association shall at least annually distribute all or a portion of the balance in the income fund to the member contribution fund, the retirement reserve fund and the employer's accumulation fund. Distribution rates shall be determined by the board and may vary for the respective accounting funds."

Section 6. Section 10-12C-11 NMSA 1978 (being Laws 1992, Chapter 118, Section 11) is amended to read:

"10-12C-11. EMPLOYER CONTRIBUTIONS.--

A. The state, through the administrative office of the courts, shall contribute nine percent of salary for each member in office to the fund.

B. Twenty-five dollars (\$25.00) from each civil case docket fee paid in magistrate court and ten dollars (\$10.00) from each civil jury fee paid in magistrate court shall be paid by the court clerk to the employer's accumulation fund."

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 7, AS AMENDED

CHAPTER 82

CHAPTER 82, LAWS 2003

AN ACT

RELATING TO WATER; PROVIDING FOR COMPLIANCE WITH AN ACEQUIA OR COMMUNITY DITCH REQUIREMENT FOR A CHANGE IN POINT OF DIVERSION OR PLACE OR PURPOSE OF USE OF A WATER RIGHT.

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

Section 1. A new section of Chapter 72, Article 5 NMSA 1978 is enacted to read:

"ACEQUIAS AND COMMUNITY DITCHES--CHANGES IN POINT OF DIVERSION OR PLACE OR PURPOSE OF USE.--

A. The state engineer shall not approve an application for a change, including an emergency change, in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch if the applicant has not complied with the applicable requirement adopted by an acequia or community ditch pursuant to Subsection E of Section 73-2-21 or Section 73-3-4.1 NMSA 1978.

B. The applicant for a change described in Subsection A of this section shall submit with the application to the state engineer documentary evidence provided by the commissioners of the acequia or community ditch of the applicant's compliance with any applicable requirement for the change adopted by the acequia or community ditch pursuant to Subsection E of Section 73-2-21 or Section 73-3-4.1 NMSA 1978.

C. If an acequia or community ditch has not adopted an applicable requirement, the applicant shall submit to the state engineer along with the application an affidavit provided by the commissioners of the acequia or community ditch stating this fact.

D. If an acequia fails to make a decision within one hundred twenty days in response to an applicant's request for approval pursuant to a applicable requirement, the acequia or community ditch shall be deemed to have approved the applicant's request for approval and the state engineer shall proceed on the application as if the applicant had complied with any applicable acequia or community ditch requirement. The applicant's request shall be in writing and delivered by certified mail to the commissioners of the acequia or community ditch.

E. The provisions of this section do not apply to water rights or lands owned by or reserved for an Indian pueblo."

Section 2. Section 73-2-21 NMSA 1978 (being Laws 1895, Chapter 1, Section 4, as amended) is amended to read:

"73-2-21. COMMISSIONERS' POWERS AND DUTIES--MAYORDOMO'S DUTIES.--

A. The commissioners shall:

(1) assess fatigue work or tasks of all parties owning water rights in such community ditches or acequias;

(2) have power to contract and be contracted with;

(3) make all necessary assessments to provide funds for the payment of the salary of the mayordomo and other legitimate expenses incident to the proper conduct and maintenance of the acequias under their charge;

(4) make contracts for obtaining water for irrigation purposes in connection with their ditches, such contracts to be ratified by a vote of a majority of the owners of water rights in the ditches;

(5) have general charge and control of all affairs pertaining to the same, together with the power to receive money in lieu of such fatigue or task work at a price to be fixed by them; and

(6) immediately upon taking office, provide bylaws, rules and regulations not in conflict with the laws of the state for the government of the ditch or acequia, a printed copy of which shall be furnished to each owner of a water right in such ditch.

B. The mayordomo or superintendent shall, under the direction of the commissioners, be the executive officer of the ditch and shall:

(1) have the superintendence of all work thereon, the distribution of the waters thereof and the collection of fines, if any, and of amounts to be paid in lieu of fatigue or task work;

(2) perform such other duties in connection with the ditch as may be prescribed by the rules and regulations of the same or as may be directed by the commissioners; and

(3) make full written reports of all money received, expended and how expended, and of all activities performed as such officer to the commissioners of

the ditch, semiannually, on the first Monday in June and the last Monday in September; provided, further, that the mayordomo shall make such further reports as may be required by the ditch commissioners.

C. The treasurer of the ditch commissioners shall make reports to the ditch commissioners of the money received, expended and how expended, and kept in the custody of the treasurer, and of all activities performed as such officer as are herein required of the mayordomo.

D. The commissioners shall receive and pass upon the reports of the mayordomo and the treasurer provided for in this section before their term of office expires. If the reports are found to be true and correct, they shall approve them; otherwise they shall reject them, respectively. All proceedings of the commissioners relating to all subjects whatsoever shall be reduced to writing in a book or books kept for that purpose, and all books and papers so kept by the commissioners and all reports made, filed or kept as herein required shall always be and remain public property, and shall be subject to the inspection of all persons therein concerned.

E. Pursuant to the rules or bylaws duly adopted by its members, an acequia or community ditch may require that a change in point of diversion or place or purpose of use of a water right served by the acequia or community ditch, or a change in a water right so that it is moved into and then served by the acequia or community ditch, shall be subject to approval by the commissioners of the acequia or community ditch. The change may be denied only if the commissioners determine that it would be detrimental to the acequia or community ditch or its members. The commissioners shall render a written decision explaining the reasons for the decision. If the person proposing the change or a member of the acequia or community ditch is aggrieved by the decision of the commissioners, he may appeal the decision in the district court of the county in which the acequia or community ditch is located within thirty days of the date of the decision. The court may set aside, reverse or remand the decision if it determines that the commissioners acted fraudulently, arbitrarily or capriciously, or that they did not act in accordance with law."

Section 3. A new Section 73-3-4.1 NMSA 1978 is enacted to read:

"73-3-4.1. COMMISSIONERS--ADDITIONAL DUTIES--APPROVAL OF CHANGES IN PLACE OR PURPOSE OF USE OF WATER--APPEALS.--Pursuant to rules or bylaws duly adopted by its members, an acequia or community ditch may require that a change in the point of diversion or place or purpose of use of a water right served by the acequia or community ditch, or a change in a water right so that it is moved into and then served by the acequia or community ditch shall be subject to the approval by the commissioners. The change may be denied only if the commissioners determine that it would be detrimental to the acequia or community ditch or its members. The commissioners shall render a written decision explaining the reasons for the decision. If the person proposing the change or a member of the acequia or community ditch is aggrieved by the decision of the commissioners, he may appeal the

decision in the district court of the county in which the acequia or community ditch is located within thirty days of the date of the decision. The court may set aside, reverse or remand the decision if it determines that the commissioners acted fraudulently, arbitrarily or capriciously or that they did not act in accordance with law."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is March 1, 2004.

HOUSE AGRICULTURE AND WATER RESOURCES

COMMITTEE SUBSTITUTE FOR SENATE BILL 123

CHAPTER 83

CHAPTER 83, LAWS 2003

AN ACT

MAKING GENERAL APPROPRIATIONS AND AUTHORIZING EXPENDITURES BY STATE AGENCIES AND DISTRIBUTIONS FOR PUBLIC EDUCATION.

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

Section 1. FISCAL YEAR 2004 GENERAL FUND APPROPRIATIONS.--Appropriations in this section are from the general fund for expenditure in fiscal year 2004 for the purposes specified, and unless otherwise indicated, any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund:

A. to the administrative office of the courts:

(1) four hundred thousand dollars (\$400,000) for water rights adjudication; and

(2) fifty thousand dollars (\$50,000) for additional clerks in the Dona Ana county magistrate court;

B. to the second judicial district court:

(1) forty thousand two hundred dollars (\$40,200) for a probation officer; [and

~~(2) ninety thousand dollars (\$90,000) for a staff attorney;]~~

C. to the third judicial district court, three hundred thousand dollars (\$300,000) for a new judge and associated costs, contingent upon Senate Finance Committee Substitute for Senate Bill 906 of the forty-sixth legislature, first session, becoming law;

D. to the sixth judicial district court, two hundred seventy-five thousand dollars (\$275,000) for a new judge and associated costs, contingent upon Senate Finance Committee Substitute for Senate Bill 906 of the forty-sixth legislature, first session, becoming law;

~~[E. to the eleventh judicial district court, sixty-six thousand four hundred dollars (\$66,400) for personal services and contracts;]~~

F. to the thirteenth judicial district court, fifty thousand dollars (\$50,000) for operational expenses;

G. to the Bernalillo county metropolitan court, five hundred thousand dollars (\$500,000) to fund operational costs;

~~[H. to the ninth judicial district attorney, one hundred thousand dollars (\$100,000) for additional staff;]~~

I. to the administrative office of the district attorneys, fifty-three thousand dollars (\$53,000) for a network-software specialist;

~~[J. to the taxation and revenue department, fifty thousand dollars (\$50,000) to lease a motor vehicle division office in Mora county;]~~

K. to the department of finance and administration:

~~[(1) one hundred thousand dollars (\$100,000) for food delivery for homebound persons in Santa Fe;]~~

~~[(2) twenty thousand dollars (\$20,000) for mariachi conference activities;]~~

(3) one hundred thousand dollars (\$100,000) to implement the Individual Development Account Act, contingent upon House Bill 35 of the forty-sixth legislature, first session, becoming law;

~~[(4) one hundred twenty thousand dollars (\$120,000) to increase funding for the council of governments;]~~

~~[(5) seventy-five thousand dollars (\$75,000) to increase reimbursement to counties for extradition, transportation and feeding of state prisoners;]~~

(6) one hundred thousand dollars (\$100,000) for a solid waste program in Valencia county;

(7) forty thousand dollars (\$40,000) to hire trainees for a youth development program for affordable housing construction in Taos county;

(8) sixty thousand dollars (\$60,000) for a Taos food sector opportunity program;

(9) seventy-eight thousand dollars (\$78,000) for the creation of cabinet agencies, contingent upon House Floor Substitute for House Appropriations and Finance Committee Substitute for House Bill 585 of the forty-sixth legislature, first session, becoming law;

(10) one hundred thousand dollars (\$100,000) to establish the New Mexico sentencing commission, contingent upon House Bill 510 of the forty-sixth legislature, first session, becoming law; and

(11) five hundred thousand dollars (\$500,000) for the New Mexico finance authority for loans to behavioral health clinics;

L. to the general services department, one hundred thousand dollars (\$100,000) for the telecommunications access fund, contingent upon House Bill 675 of the forty-sixth legislature, first session, becoming law;

M. to the office of the governor, two hundred thousand dollars (\$200,000) to create the office of homeland security;

N. to the secretary of state, ninety thousand dollars (\$90,000) for voter identification cards;

O. to the border authority, one hundred fifty thousand dollars (\$150,000) for budget expansion;

~~[P. to the tourism department, one hundred fifty thousand dollars (\$150,000) to promote recognition, understanding and celebration of national historic trails and byways in New Mexico;]~~

Q. to the economic development department:

(1) one hundred thousand dollars (\$100,000) to match federal funds for the New Mexico rural development response council; and

(2) one hundred thousand dollars (\$100,000) for the New Mexico-Chihuahua economic development commission;

R. to the regulation and licensing department, one million five hundred thousand dollars (\$1,500,000) for personal services and benefits and other operating expenses contingent upon Senate Bill 574 and Senate Bill 596 of the forty-sixth legislature, first session, becoming law and the regulation and licensing department promulgating regulations increasing the building permit fee, installer and repairman annual license fee and the permit fee;

S. to the public regulation commission:

~~[(1) one hundred thousand dollars (\$100,000) for an attorney in the insurance division; and]~~

(2) five hundred fifty thousand dollars (\$550,000) for operational costs of the insurance division;

T. to the office of cultural affairs:

(1) ten thousand dollars (\$10,000) for library materials at the south valley library;

~~[(2) forty-six thousand six hundred dollars (\$46,600) to increase staff at Jemez state monument;]~~

~~[(3) one hundred thousand dollars (\$100,000) to increase staff at Fort Selden state monument; and]~~

~~[(4) fifty thousand dollars (\$50,000) for operations and improvements at old Lincoln county memorial monument;]~~

U. to the department of game and fish, fifty thousand dollars (\$50,000) for the endangered species program;

V. to the office on African American affairs, fifty thousand dollars (\$50,000) to provide for the administration and promotion of the cultural and history collection of the office;

W. to the New Mexico office of Indian affairs:

(1) twenty-five thousand dollars (\$25,000) for the Sandoval county Indian voting program;

(2) fifty thousand dollars (\$50,000) for operations of the Isleta recreation center; and

(3) forty thousand dollars (\$40,000) for the Pueblo of Jemez Walatowa visitors center;

X. to the state agency on aging:

~~[(1) one hundred thousand dollars (\$100,000) for program support;~~
and]

(2) fifty thousand dollars (\$50,000) for respite care for families of persons with Alzheimer's disease and related dementia;

Y. to the human services department:

(1) fifty thousand dollars (\$50,000) for a food bank program in Las Cruces that provides nourishing take-home meals for low-income children; and

(2) three hundred fifty thousand dollars (\$350,000) for homeless programs, including shelter, transitional housing, meals and support services;

Z. to the labor department, three hundred thousand dollars (\$300,000) for the at-risk youth program;

AA. to the division of vocational rehabilitation of the state department of public education, one hundred thousand dollars (\$100,000) to provide for a cost-of-living adjustment, begin independent living programs in unserved counties and support rural independent living services;

BB. to the governor's committee on concerns of the handicapped, sixteen thousand dollars (\$16,000) for one-half full-time-equivalent position for the general assistance program for persons transitioning from nursing homes;

CC. to the department of health:

(1) fifty thousand dollars (\$50,000) for the farmers' market nutrition program;

(2) twenty-five thousand dollars (\$25,000) for respite care services for families of the developmentally disabled;

(3) fifty thousand dollars (\$50,000) to implement the Emergency Contraception Act, contingent upon House Bill 315 of the forty-sixth legislature, first session, becoming law;

(4) one hundred thousand dollars (\$100,000) for Native American human immunodeficiency virus and acquired immune deficiency syndrome services;

(5) one hundred thousand dollars (\$100,000) for continuation of a federally initiated black tar heroin prevention program in Rio Arriba, Santa Fe and Taos counties, including the eight northern Indian pueblos;

(6) fifteen thousand dollars (\$15,000) to increase the sickle cell program;

~~[(7) one hundred thousand dollars (\$100,000) for an experiential community learning center based on a five-acre farm school in the south valley of Bernalillo county;]~~

(8) seventy-five thousand dollars (\$75,000) for a school-based health clinic in the west Las Vegas school district;

~~[(9) one hundred fifty thousand dollars (\$150,000) for the southern rehabilitation center pharmacy program;]~~

(10) two hundred fifty thousand dollars (\$250,000) for the New Mexico health service corps;

(11) eight hundred fifty thousand dollars (\$850,000) for developmental disabilities to provide parity between the federal waiver and state programs;

(12) two million dollars (\$2,000,000) to reduce the developmental disabilities waiting list by funding one hundred sixty-seven additional slots; and

(13) two hundred fifty thousand dollars (\$250,000) to fund department of health receiverships;

DD. to the children, youth and families department:

~~[(1) one hundred thousand dollars (\$100,000) for the at-risk youth retail program in Bernalillo county;]~~

(2) twenty-five thousand dollars (\$25,000) for a youth shelter to serve northeast New Mexico, including San Miguel, Mora, Harding, Colfax and Union counties; and

(3) eight hundred thousand dollars (\$800,000) to restore funding to adult protective services;

EE. to the department of military affairs, two thousand dollars (\$2,000) for administrative costs for the state defense force division;

FF. to the corrections department:

(1) thirty thousand dollars (\$30,000) for the New Mexico women's correctional facilities child visitation program;

~~[(2) fifty thousand dollars (\$50,000) for the female incarceration task force, contingent upon House Bill 582 of the forty-sixth legislature, first session, becoming law;] and~~

(3) five hundred thousand dollars (\$500,000) to reduce the projected inmate population by approximately three hundred inmates in fiscal year 2004. The funding shall be used primarily to create additional slots in community corrections programs that will hasten the reintegration process for as many inmates as possible;

GG. to the state department of public education:

~~[(1) one hundred sixty five thousand dollars (\$165,000) for an educational resource center in the southeastern region of the state;]~~

(2) one hundred thousand dollars (\$100,000) for kindergarten-plus to provide for extended kindergarten for high-poverty areas;

~~[(3) five hundred thousand dollars (\$500,000) to provide a minimum salary for substitute teachers at seventy-five percent of the average beginning teacher's salary;]~~

(4) one hundred thousand dollars (\$100,000) for a museum-based summer day camp in Santa Fe;

~~[(5) thirty thousand dollars (\$30,000) for the accelerated reader program for Taylor middle school in the Albuquerque public school district;]~~

~~[(6) twenty thousand dollars (\$20,000) for an accelerated math program for Taylor middle school in the Albuquerque public school district;]~~

~~[(7) two hundred seventy thousand dollars (\$270,000) for personnel development programs and future teachers training;] and~~

(8) four million dollars (\$4,000,000) to be distributed through the state equalization guarantee for arts education, which shall be determined by multiplying the full-time-equivalent MEM in department-qualified fine arts programs by the cost differential factor of 0.05;

HH. to the commission on higher education:

(1) for the governing board of San Juan college:

~~[(a) seventy-five thousand dollars (\$75,000) to develop a community-based program for underserved youth in San Juan county;]~~

(b) two hundred thousand dollars (\$200,000) for the nursing education program; and

(c) one hundred thousand dollars (\$100,000) for the oil and gas job training program; and

(2) for the community college board of Santa Fe community college, four hundred thousand dollars (\$400,000) for the small business development center;

II. to the board of regents of the university of

New Mexico:

(1) fifty thousand dollars (\$50,000) for the Corinne Wolfe children's law center;

(2) twenty-five thousand dollars (\$25,000) for the mock trials program;

~~[(3) one hundred thousand dollars (\$100,000) to expand the manufacturing engineering program;]~~

~~[(4) eight thousand six hundred dollars (\$8,600) to increase funding to Morrisey hall research;]~~

(5) one hundred fifty thousand dollars (\$150,000) to restore funding for the southwest research center; [and]

~~[(6) one hundred thousand dollars (\$100,000) for the Anderson school of business to promote its management coursework;]~~

JJ. to the board of regents of New Mexico state university:

(1) one hundred thousand dollars (\$100,000) for the agricultural science center of the agricultural experiment station in Farmington;

(2) three hundred thousand dollars (\$300,000) for statewide agricultural programs;

~~[(3) twenty-five thousand dollars (\$25,000) for the partnership in parenting education program;]~~

(4) fifty thousand dollars (\$50,000) to promote and develop New Mexico's farmers' market program;

(5) one hundred eighty thousand dollars (\$180,000) to match federal funds for water conservation and natural resource restoration technical assistance pursuant to agreements with the United States department of agriculture's natural resources conservation service;

~~[(6) six hundred fifty thousand dollars (\$650,000) for phreatophyte eradication and control;]~~

(7) one hundred thousand dollars (\$100,000) for a pilot program of using goats on the Rio Grande to control phreatophytes;

(8) one hundred thirty thousand dollars (\$130,000) to increase profitability and yield of chile and to increase the economic sustainability of the New Mexico chile industry;

~~[(9) fifty thousand dollars (\$50,000) to establish a 4-H program in Mora county; and]~~

~~[(10) one hundred fifty thousand dollars (\$150,000) for the range improvement task force to conduct quantitative forage monitoring and assessments on public lands;]~~

KK. to the board of regents of western New Mexico

university:

(1) one hundred thousand dollars (\$100,000) for the bachelor of science degree nursing program; and

(2) two hundred fifty thousand dollars (\$250,000) to increase funding for the child development center;

LL. to the board of regents of eastern New Mexico university:

(1) fifty thousand dollars (\$50,000) for public television facilities to convert to digital television; and

(2) one hundred fifty thousand dollars (\$150,000) for a social work degree program; and

MM. to the board of regents of New Mexico institute of mining and technology:

~~[(1) two hundred thousand dollars (\$200,000) for the institute for complex additive systems analysis;]~~

(2) one hundred thousand dollars (\$100,000) for the energetic materials research and testing center; and

(3) two hundred thousand dollars (\$200,000) to match a United States department of energy grant at the petroleum recovery research center.

Section 2. FISCAL YEAR 2003 GENERAL FUND

APPROPRIATIONS.--Appropriations in this section are from the general fund for expenditure in fiscal years 2003 and 2004 for the purposes specified, and unless otherwise indicated, any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund:

A. to the legislative council service:

(1) twenty thousand dollars (\$20,000) for the land grant committee;
[and]

~~[(2) two hundred fifty thousand dollars (\$250,000) to study and develop a financing plan for universal health care;]~~

~~[B. to the court of appeals, ten thousand dollars (\$10,000) for an architectural design study for remodeling the Albuquerque court facility;]~~

C. to the administrative office of the courts:

(1) one million five hundred thousand dollars (\$1,500,000) to replace federal funds for drug courts;

~~[(2) ten thousand dollars (\$10,000) for a study of a lease versus the purchase of a building for the Las Cruces magistrate court facility in the Dona Ana magistrate district;] and~~

(3) one hundred thousand dollars (\$100,000) for salaries and benefits for magistrate courts statewide;

D. to the eleventh judicial district court, one hundred thousand dollars (\$100,000) for furniture for the juvenile justice complex;

E. to the Bernalillo county metropolitan court:

(1) five hundred thousand dollars (\$500,000) for moving costs; and

(2) two hundred thirteen thousand dollars (\$213,000) to establish a mental health court;

F. to the fourth judicial district attorney, three hundred seventy-five thousand dollars (\$375,000) for cases in Santa Rosa;

G. to the eleventh judicial district attorney:

(1) seventy-five thousand dollars (\$75,000) for capital crime prosecution in division 1; and

(2) one hundred forty-five thousand dollars (\$145,000) for DWI prosecutions in division 1;

H. to the thirteenth judicial district attorney, twenty-five thousand dollars (\$25,000) for furniture;

I. to the office of the attorney general, fifty thousand dollars (\$50,000) for a Treaty of Guadalupe Hidalgo division;

J. to the department of finance and administration:

(1) fifty thousand dollars (\$50,000) to create cabinet agencies, contingent upon House Floor Substitute for House Appropriations and Finance Committee Substitute for House Bill 585 of the forty-sixth legislature, first session, becoming law;

(2) one hundred twenty-one thousand dollars (\$121,000) for the Santa Fe farmers' market;

(3) one hundred ninety thousand dollars (\$190,000) for a dynamic revenue forecasting pilot project;

(4) seventy-five thousand dollars (\$75,000) for a survey of low-income housing needs in Chaves county;

(5) one hundred sixty-four thousand nine hundred dollars (\$164,900) for the state board of finance to repay an emergency loan to Grant county;

~~[(6) fifty thousand dollars (\$50,000) to complete an asset inventory statewide;]~~

~~[(7) fifty thousand dollars (\$50,000) for the facilitation of an intergovernmental process between Indian entities and counties;]~~

(8) five hundred thousand dollars (\$500,000) to match federal and other states' allocations for the four corners monument;

(9) one million dollars (\$1,000,000) for the water and wastewater planning fund;

(10) six hundred thousand dollars (\$600,000) for operating expenses of the Cumbres and Toltec scenic railroad commission;

(11) one hundred thousand dollars (\$100,000) to support child abuse and neglect citizen review boards statewide; and

(12) five hundred thousand dollars (\$500,000) to continue operation, development and implementation of the state human resource system. The implementation plan shall be reviewed by the chief information officer and the legislative finance committee;

K. to the general services department, seven hundred two thousand dollars (\$702,000) for increased insurance costs;

L. to the office of the governor:

(1) three hundred twenty-seven thousand dollars (\$327,000) to establish the public employee labor relations board, contingent upon House Bill 508 of the forty-sixth legislature, first session, becoming law;

(2) one hundred thousand dollars (\$100,000) for a Las Cruces satellite office; and

(3) fifty thousand dollars (\$50,000) to create the office of homeland security;

M. to the state commission of public records, fifteen thousand dollars (\$15,000) for web site and educational development;

N. to the office of the lieutenant governor, seventy-five thousand dollars (\$75,000) for salaries and benefits for employees;

O. to the state commission of public records, seventy thousand dollars (\$70,000) for a records management system;

P. to the secretary of state:

(1) one million two hundred fifty thousand dollars (\$1,250,000) for the electronic voting system revolving fund; and

(2) fifty thousand dollars (\$50,000) to develop an electronic campaign reporting system, contingent upon Senate Bill 22 of the forty-sixth legislature, first session, becoming law;

Q. to the tourism department, one million five hundred thousand dollars (\$1,500,000) for tourism advertising and promotion;

R. to the economic development department:

(1) one million seven hundred fifty thousand dollars (\$1,750,000) for recruitment and marketing;

(2) one hundred fifty thousand dollars (\$150,000) for military base planning;

(3) seven million dollars (\$7,000,000) for in-plant training;

(4) two hundred thousand dollars (\$200,000) for business incubation services in southeast Albuquerque;

(5) three hundred thousand dollars (\$300,000) for a contract for manufacturing extension services, contingent on receipt of money from the national institute of standards and technology to operate a manufacturing center in New Mexico;

(6) fifty thousand dollars (\$50,000) to promote Las Cruces as the top small metropolitan area for business and careers and one of the best places to retire;

(7) seventy-five thousand dollars (\$75,000) to develop a strategic plan for attracting and retaining film production companies; and

(8) fifty thousand dollars (\$50,000) to contract for services that encourage and reward quality in business, education, government and health care;

S. to the office of cultural affairs:

(1) one hundred thousand dollars (\$100,000) for operations and maintenance at old Lincoln county memorial monument;

(2) fifty thousand dollars (\$50,000) to curate an exhibit of southern New Mexico arts at the museum of fine arts in Santa Fe;

(3) fifty thousand dollars (\$50,000) for start-up costs for the Mesilla plaza monument;

~~[(4) ten thousand dollars (\$10,000) to purchase "A New Mexico Story: The Bataan Death March to the Atomic Bomb" video for every public library; for every middle school, junior high school and high school library; and for every armory in New Mexico;]~~

(5) twenty thousand dollars (\$20,000) to provide symphonic education services at the national Hispanic cultural center of New Mexico;

(6) one hundred thousand dollars (\$100,000) to establish the New Mexico film museum in Santa Fe, contingent upon Senate Bill 701 of the forty-sixth legislature, first session, becoming law;

(7) seventy-five thousand dollars (\$75,000) for development of educational programs in historic preservation and regionalism;

(8) sixty thousand dollars (\$60,000) for operational expenses of the Anthony valley community library; and

(9) two hundred thousand dollars (\$200,000) to implement and operate a program for youth education in the performing arts in a year-round performing arts center in Santa Fe;

T. to the energy, minerals and natural resources department:

(1) one hundred thousand dollars (\$100,000) to update the gas transmission pipeline study;

(2) fifty thousand dollars (\$50,000) to complete the master plan for the Mesilla valley bosque state park; and

(3) eighty thousand dollars (\$80,000) for a renewable energy and fuel cell demonstration project for on-site electric generation;

~~[U. to the state land office, one hundred thousand dollars (\$100,000) to prepare and file an original action in the United States supreme court against the United States department of the interior and the United States department of agriculture to obtain title to public lands in New Mexico;]~~

V. to the office of the state engineer:

(1) three hundred thousand dollars (\$300,000) for water planning;

(2) one million five hundred thousand dollars (\$1,500,000) for the WATERS database;

(3) one million one hundred fifty thousand dollars (\$1,150,000) for adjudications of water rights on the Pecos river and Rio Grande; and

(4) fifty thousand dollars (\$50,000) for a deep aquifer study in Lea county;

W. to the commission for deaf and hard-of-hearing persons, fifty thousand dollars (\$50,000) for outreach efforts;

X. to the New Mexico office of Indian affairs:

(1) thirty-eight thousand dollars (\$38,000) to develop the Pueblo of San Juan's geographic information system for the 911 addressing project; and

(2) fifty thousand dollars (\$50,000) for the Jicarilla Apache Tribe historic preservation program;

Y. to the state agency on aging, fifty thousand dollars (\$50,000) for rent payments at the temporary Cimarron senior center;

Z. to the human services department:

(1) one hundred thousand dollars (\$100,000) for counseling inmates on child support;

(2) one hundred fifty thousand dollars (\$150,000) for a medicaid waiver program for prescriptions for seniors and persons eligible for services under the state's medicaid waiver programs for the developmentally disabled and elderly and disabled persons;

(3) two hundred thousand dollars (\$200,000) for completion of the fiscal year 2002 fiscal audit;

(4) one million one hundred thousand dollars (\$1,100,000) for administrative and operating costs of the state applicant link to services assistance system; and

(5) one million three hundred fifty thousand dollars (\$1,350,000) for food stamp reimbursement costs;

AA. to the labor department, twenty thousand dollars (\$20,000) for an equal pay task force, contingent upon House Bill 325 of the forty-sixth legislature, first session, becoming law;

BB. to the department of health:

(1) one million dollars (\$1,000,000) for rape crisis and related programs;

(2) one hundred twenty thousand dollars (\$120,000) to provide statewide sexual assault treatment and prevention programs;

~~[(3) one hundred thousand dollars (\$100,000) for software for a commodity supplemental food program;]~~

(4) one hundred seventy-five thousand dollars (\$175,000) for the women's health services family care and counseling center in Santa Fe; and

(5) forty thousand dollars (\$40,000) for services at the Las Cruces rape crisis center;

CC. to the department of environment:

(1) two hundred thousand dollars (\$200,000) for an ozone pollution solution in northwest New Mexico; and

(2) forty-four thousand dollars (\$44,000) for a statewide environmental assessment and inventory;

DD. to the New Mexico veterans' service commission, fifty thousand dollars (\$50,000) for taps at funerals;

EE. to the children, youth and families department:

(1) one million five hundred thousand dollars (\$1,500,000) for legal costs associated with the *Joseph A.* class action suit; and

(2) one million dollars (\$1,000,000) for domestic violence programs;

FF. to the department of public safety:

(1) seven hundred fifty thousand dollars (\$750,000) for vehicle replacement;

(2) four hundred thousand dollars (\$400,000) for the crime laboratory backlog; and

(3) one hundred thousand dollars (\$100,000) for domestic violence training for law enforcement and health care personnel;

GG. to the state department of public education:

(1) two million dollars (\$2,000,000) for a computerized learning system that aligns public school curricula to New Mexico academic content standards and the statewide assessment program;

~~[(2) one million dollars (\$1,000,000) for school libraries;]~~

(3) fifty thousand dollars (\$50,000) to provide supplemental funding for the adult basic education program at the Alamogordo branch of New Mexico state university;

(4) ten thousand dollars (\$10,000) for the Santa Fe volleyball team;

(5) one hundred thousand dollars (\$100,000) for curriculum development in social studies for New Mexico history to include all perspectives and elements;

~~[(6) two hundred thousand dollars (\$200,000) for research-based reform efforts;]~~ and

(7) one hundred thousand dollars (\$100,000) for charter school incubation services;

HH. to the commission on higher education:

(1) two million dollars (\$2,000,000) to expand nursing programs;

(2) three hundred thousand dollars (\$300,000) for high-skills training;

(3) three million dollars (\$3,000,000) for endowed chairs contingent on Senate Bill 466 of the forty-sixth legislature, first session, becoming law; and

(4) one hundred fifty-five thousand dollars (\$155,000) for San Juan college to develop public school training programs;

II. to the board of regents of the university of New Mexico:

~~[(1) one hundred sixty-five thousand dollars (\$165,000) to disseminate census information and conduct a demographic analysis;]~~

(2) three hundred thousand dollars (\$300,000) for the Taos branch to develop training programs for manpower development of miners in northern New Mexico;

(3) forty-three thousand dollars (\$43,000) for a feasibility study on a passage rail system from Juarez, Mexico, to Denver, Colorado;

(4) one hundred forty-four thousand seven hundred fifty dollars (\$144,750) for the southwest research center;

~~[(5) fifty thousand dollars (\$50,000) for the mock trials program;~~
and]

~~[(6) one hundred thousand dollars (\$100,000) for the philosophy department for scholarships;]~~

JJ. to the board of regents of New Mexico state university:

(1) one million two hundred thousand dollars (\$1,200,000) for phreatophyte removal programs. The appropriation is contingent on soil and water conservation districts:

(a) developing management and native vegetation restoration plans;

(b) conducting hearings within the local conservation district to receive public input on the plans;

(c) carrying out aerial spraying only by helicopter or ground application with prior public notice;

(d) monitoring and evaluating the effects of control on wildlife, water quality, vegetation and soil health; and

(e) if control affects threatened or endangered species, the projects proponents will take action to ensure compliance with applicable federal law and conformance with any duly enacted recovery plan;

~~[(2) one hundred thousand dollars (\$100,000) for the preservation of New Mexico wild horses;]~~

(3) seven hundred fifty thousand dollars (\$750,000) for distance education technology for teacher licensure programs; [and]

~~[(4) two hundred thousand dollars (\$200,000) for start-up funding for the center for border superintendency;]~~

KK. to the board of regents of New Mexico highlands university, seven hundred fifty thousand dollars (\$750,000) to assist with accounts receivable; and

LL. to the board of regents of northern New Mexico state school:

(1) two hundred thirty thousand dollars (\$230,000) for a middle school science and math teacher training program; and

(2) fifty thousand dollars (\$50,000) to plan the development and implementation of a curriculum for a middle college program.

Section 3. FISCAL YEAR 2003 OTHER STATE FUNDS APPROPRIATIONS.--Appropriations in this section are from other state funds as specified for expenditure in fiscal years 2003 and 2004 for the purposes specified, and unless otherwise indicated, any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the appropriate fund:

A. to the administrative office of the courts, four hundred fifty thousand dollars (\$450,000) from the magistrate court warrant enforcement fund for fiscal year 2003 leases, and any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the magistrate court warrant enforcement fund;

B. to the administrative office of the courts, one million five hundred thousand dollars (\$1,500,000) from the local DWI grant fund to replace federal funding for drug courts and to expand drug courts, contingent upon House Bill 190 of the forty-sixth legislature, first session, or similar legislation that allows for the use of the fund for drug courts, becoming law;

C. to the department of finance and administration, three hundred thousand dollars (\$300,000) from the local DWI grant fund for ignition interlock devices, contingent upon Senate Bill 266 of the forty-sixth legislature, first session, becoming law;

D. to the department of game and fish, three hundred thousand dollars (\$300,000) from the game protection fund for Eagle Nest lake;

E. to the state engineer:

(1) six hundred ten thousand dollars (\$610,000) from the New Mexico irrigation works construction fund for the WATERS database;

(2) one hundred thousand dollars (\$100,000) from the New Mexico irrigation works construction fund for adjudication of water rights on the Pecos river and Rio Grande; and

(3) two million five hundred thousand dollars (\$2,500,000) from the improvement of Rio Grande income fund for litigation expenses regarding federal natural resources policies;

F. to the workers' compensation administration, fifty thousand dollars (\$50,000) from the workers' compensation administration fund for workbooks and advertising; and

G. to the department of health, three hundred thousand dollars (\$300,000) from fiscal year 2002 cash balances for nursing management.

Section 4. FISCAL YEAR 2004 OTHER STATE FUNDS APPROPRIATIONS.--Appropriations in this section are from other state funds as specified for expenditure in fiscal year 2004 for the purposes specified, and unless otherwise indicated, any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the appropriate fund:

A. to the administrative office of the courts, seven hundred eleven thousand dollars (\$711,000) from the magistrate and metropolitan court capital fund for phase 2 of the magistrate court video arraignment project and to conduct a lease versus build feasibility study for the Dona Ana magistrate court in Las Cruces;

B. to the Bernalillo county metropolitan court, one million eight hundred fifty thousand dollars (\$1,850,000) from the magistrate and metropolitan court capital fund to complete construction, furnishing and equipping the new court building;

C. to the public defender department, three hundred seventy-five thousand dollars (\$375,000) from fiscal year 2003 cash balances for Santa Rosa cases;

D. to the state land office, one hundred thousand dollars (\$100,000) from the state lands maintenance fund for the natural resource revenue recovery task force, contingent upon House Bill 452 of the forty-sixth legislature, first session, becoming law; and

E. to the administrative office of the courts, one hundred thousand dollars (\$100,000) from the magistrate and metropolitan court capital fund to acquire real property for or to plan, design, construct, furnish or equip a new magistrate court building in Las Cruces for the Dona Ana magistrate district.

Section 5. MEDICAID IN THE SCHOOLS.--The appropriation to the human services department in the General Appropriation Act of 2003 contains up to two million dollars (\$2,000,000) for use in defining and developing an enhanced billing capability for claims submitted under the medicaid in the schools program. Of this amount, the department may expend up to one hundred thousand dollars (\$100,000) to be matched with federal medicaid funds, to

develop specifications for a completely digital front-end loading system that electronically submits claims to the department. The remaining amount shall be made available to individual school districts as implementation grants to be used for procurement of such systems.]

Section 6. COMPENSATION APPROPRIATIONS.--

A. Two million nine hundred forty-nine thousand six hundred dollars (\$2,949,600) is appropriated from the general fund to the department of finance and administration for expenditure in fiscal year 2004 to provide salary increases subject to satisfactory job performance. The salary increases shall be effective the first full pay period after January 1, 2004, and distributed as follows:

(1) eighty thousand eight hundred dollars (\$80,800) to provide the justices of the supreme court with a salary increase to ninety-nine thousand one hundred seventy dollars (\$99,170); and to provide salary increases pursuant to the provisions of Section 34-1-9 NMSA 1978 to the chief justice of the supreme court; the chief judge of the court of appeals; judges of the court of appeals, district courts, metropolitan courts and magistrate courts; and child support hearing officers and special commissioners;

(2) two hundred fifty-two thousand two hundred dollars (\$252,200) to provide judicial permanent employees whose salaries are not set by statute with a one percent salary increase;

(3) seven thousand four hundred dollars (\$7,400) to provide salary increases for district attorneys as follows: district attorneys who serve in a district that does not include a class A county shall receive an annual salary of eighty-five thousand seven hundred eighty-five dollars (\$85,785); and district attorneys who serve in a district that includes a class A county shall receive an annual salary of ninety thousand three hundred dollars (\$90,300);

(4) one hundred eighty-eight thousand two hundred dollars (\$188,200) to provide all district attorney permanent employees, other than elected district attorneys, with a one percent salary increase;

(5) one million nine hundred thirty-six thousand eight hundred dollars (\$1,936,800) to provide incumbents in agencies governed by the Personnel Act with a ~~one percent~~ salary increase;

(6) two hundred thirty-one thousand dollars (\$231,000) to provide executive exempt employees, including attorney general employees and workers' compensation judges, with a one percent salary increase;

(7) one hundred sixty-five thousand six hundred dollars (\$165,600) to provide commissioned officers of the New Mexico state police division of the department of public safety with a one percent salary step increase in accordance with the New Mexico state police career pay system;

(8) forty-five thousand eight hundred dollars (\$45,800) to provide teachers in the department of health, corrections department, children, youth and families department and commission for the blind with a one percent salary increase; and

(9) forty-one thousand eight hundred dollars (\$41,800) to provide permanent legislative employees, including permanent employees of the legislative council service, legislative finance committee, legislative education study committee, legislative maintenance department, the house and senate and house and senate leadership staff with a one percent salary increase.

B. One million two hundred ninety-four thousand dollars (\$1,294,000) is appropriated from the general fund to the commission on higher education for expenditure in fiscal year 2004 to provide faculty of four- and two-year post-secondary educational institutions with a one-half percent salary increase. The salary increases shall be effective the first full pay period after July 1, 2003.

C. 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 the general fund appropriations in the General Appropriation Act of 2003. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund.

D. 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 2003, 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 2004. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the appropriate fund.

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 655, AS AMENDED

CHAPTER 84

CHAPTER 84, LAWS 2003

AN ACT

RELATING TO PUBLIC FINANCE; ESTABLISHING INVESTMENT CRITERIA FOR LOCAL GOVERNMENT PERMANENT FUNDS.

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

Section 1. Section 6-6-19 NMSA 1978 (being Laws 1989, Chapter 276, Section 3) is amended to read:

"6-6-19. LOCAL GOVERNMENT PERMANENT FUND.--

A. The local governing body of a county or municipality may by ordinance establish a local government permanent fund and a local government income fund.

B. The local government permanent fund shall constitute a fund in the treasury of the county or municipality into which may be deposited at the end of a fiscal year an amount of the unappropriated general fund surplus. The amount that may be deposited into the local government permanent fund is any portion of the unappropriated general fund surplus that is in excess of fifty percent of the prior fiscal year's budget of the county or municipality. Money in the permanent fund may be appropriated or expended only pursuant to approval of the voters of the county or municipality as provided in Subsection E of this section.

C. Money in the local government permanent fund may be invested by the local board of finance for the county or municipality in the types of investments specified in Section 6-10-10 NMSA 1978 and as specified in Sections

6-10-36 and 6-10-44 NMSA 1978. Earnings from the investment of the permanent fund shall be deposited in the local government income fund in the treasury of the county or municipality. Money in the income fund may be budgeted and appropriated by the local governing body for expenditure for any purpose of the county or municipality or may be deposited in the permanent fund.

D. Investment authority for a local government permanent fund shall be as follows:

(1) if the fund is less than ten million dollars (\$10,000,000), it shall be invested as other funds of the local government; and

(2) if the fund is ten million dollars (\$10,000,000) or over, it may be invested as funds of class A counties are invested.

E. The governing body of a county or municipality may adopt a resolution calling for an election on the question of expenditure of any amount of the local government permanent fund for a specified county or municipal purpose. The election shall be held within sixty days after the action of the governing body. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within the county or special municipal elections under the Municipal Election Code. If a majority of the registered voters of the county or municipality voting on the question vote for the expenditure of a specified amount of the local government permanent fund for a specified county or municipal purpose, then that amount of money shall be available for appropriation and expenditure by the county or municipality for that purpose. If a majority of the registered voters of the county or municipality voting on the question vote against the expenditure of a specified amount of the local government permanent fund for a specified county or municipal purpose, then money in the local government permanent fund shall not be expended or appropriated for that purpose. Following an election at which the question was not approved, the question shall not again be submitted to the voters of that county or municipality within one year of the date of that election."

SENATE BILL 40, AS AMENDED,

APPROVED WITHOUT SIGNATURE

MARCH 17, 2003. SEE ART. 4,

SECTION 22, N.M. CONST.

CHAPTER 85

CHAPTER 85, LAWS 2003

AN ACT

RELATING TO PUBLIC RETIREMENT; CHANGING STATE LEGISLATOR RETIREMENT COVERAGE; PROVIDING FOR RE-EMPLOYMENT OF RETIRED PUBLIC EMPLOYEES BY AFFILIATED PUBLIC EMPLOYERS WITHOUT SUSPENSION OF RETIREMENT BENEFITS; AUTHORIZING FORMER LEGISLATORS TO PURCHASE GROUP HEALTH INSURANCE COVERAGE PURSUANT TO THE RETIREE HEALTH CARE ACT; CREATING A FUND; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 10-7C-4 NMSA 1978 (being Laws 1990, Chapter 6, Section 4, as amended) is amended to read:

"10-7C-4. DEFINITIONS.--As used in the Retiree Health Care Act:

A. "active employee" means an employee of a public institution or any other public employer participating in either the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act or an employee of an independent public employer;

B. "authority" means the retiree health care authority created pursuant to the Retiree Health Care Act;

C. "basic plan of benefits" means only those coverages generally associated with a medical plan of benefits;

D. "board" means the board of the retiree health care authority;

E. "current retiree" means an eligible retiree who is receiving a disability or normal retirement benefit under the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, the Public Employees Retirement Reciprocity Act or the retirement program of an independent public employer on or before July 1, 1990;

F. "eligible dependent" means a person obtaining retiree health care coverage based upon that person's relationship to an eligible retiree as follows:

(1) a spouse;

(2) an unmarried child under the age of nineteen 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 eligible retiree for maintenance and support;

(d) a child for whom the eligible retiree is the legal guardian and who is primarily dependent on the eligible retiree 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;

(3) a child described in Subparagraphs (a) through (e) of Paragraph (2) of this subsection who is between the ages of nineteen and twenty-five and is a full-time student at an accredited educational institution; provided that "full-time student" shall be a student enrolled in and taking twelve or more semester hours or its equivalent contact hours in primary, secondary, undergraduate or vocational school or a student enrolled in and taking nine or more semester hours or its equivalent contact hours in graduate school;

(4) a dependent child over nineteen who is wholly dependent on the eligible retiree for maintenance and support and who is incapable of self-sustaining employment by reason of mental retardation or physical handicap; provided that proof of incapacity and dependency shall be provided within thirty-one days after the child reaches the limiting age and at such times thereafter as may be required by the board;

(5) a surviving spouse defined as follows:

(a) "surviving spouse" means the spouse to whom a retiree was married at the time of death; or

(b) "surviving spouse" means the spouse to whom a deceased vested active employee was married at the time of death; or

(6) a surviving dependent child who is the dependent child of a deceased eligible retiree whose other parent is also deceased;

G. "eligible employer" means either:

(1) a "retirement system employer", which means an institution of higher education, a school district or other entity participating in the public school insurance authority, a state agency, state court, magistrate court, municipality, county or public entity, each of which is affiliated under or covered by the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or

(2) an "independent public employer", which means a municipality, county or public entity that is not a retirement system employer;

H. "eligible retiree" means:

(1) a "nonsalaried eligible participating entity governing authority member" who is a person who is not a retiree and who:

(a) has served without salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act and is certified to be such by the executive director of the public school insurance authority;

(b) has maintained group health insurance coverage through that member's governing authority if such group health insurance coverage was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph, is eligible under Subparagraph (a) of this paragraph and has applied before August 1, 1993 to the authority to participate in the program;

(2) a "salaried eligible participating entity governing authority member" who is a person who is not a retiree and who:

(a) has served with salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act;

(b) has maintained group health insurance through that member's governing authority, if such group health insurance was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph, is eligible under Subparagraph (a) of this paragraph and has applied before August 1, 1993 to the authority to participate in the program;

(3) an "eligible participating retiree" who is a person who:

(a) falls within the definition of a retiree, has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires on or before July 1, 1995, in which event the time period required for employee and employer contributions shall become the period of time between July 1, 1990 and the date of retirement, and who is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement board or the governing authority of an independent public employer;

(b) falls within the definition of a retiree, retired prior to July 1, 1990 and is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement association or the governing

authority of an independent public employer; but this paragraph does not include a retiree who was an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act and did not after January 1, 1993 elect to become a participating employer; unless the retiree: 1) retired on or before June 30, 1990; and 2) at the time of retirement did not have a retirement health plan or retirement health insurance coverage available from his employer; or

(c) is a retiree who: 1) was at the time of retirement an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act, but which eligible employer subsequently elected after January 1, 1993 to become a participating employer; 2) has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires less than five years after the date participation begins, in which event the time period required for employee and employer contributions shall become the period of time between the date participation begins and the date of retirement; and

(3) is certified to be a retiree by the educational retirement director, the executive director of the public employees retirement board or the governing authority of an independent public employer; or

(4) a "legislative member", which means a person who is not a retiree and who served as a member of the New Mexico legislature for at least two years, but is no longer a member of the legislature and is certified to be such by the legislative council service;

I. "fund" means the retiree health care fund;

J. "group health insurance" means coverage that includes but is not limited to life insurance, accidental death and dismemberment, hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, eye care, obstetrical benefits, prescribed drugs, medicines and prosthetic devices, medicare supplement, medicare carveout, medicare coordination and other benefits, supplies and services through the vehicles of indemnity coverages, health maintenance organizations, preferred provider organizations and other health care delivery systems as provided by the Retiree Health Care Act and other coverages considered by the board to be advisable;

K. "ineligible dependents" include:

(1) those dependents created by common law relationships;

(2) dependents while in active military service;

(3) parents, aunts, uncles, brothers, sisters, grandchildren and other family members left in the care of an eligible retiree without evidence of legal guardianship; and

(4) anyone not specifically referred to as an eligible dependent pursuant to the rules and regulations adopted by the board;

L. "participating employee" means an employee of a participating employer, which employee has not been expelled from participation in the Retiree Health Care Act pursuant to Section 10-7C-10 NMSA 1978;

M. "participating employer" means an eligible employer who has satisfied the conditions for participating in the benefits of the Retiree Health Care Act, including the requirements of Subsection M of Section 10-7C-7 NMSA 1978 and Subsection D or E of Section 10-7C-9 NMSA 1978, as applicable;

N. "public entity" means a flood control authority, economic development district, council of governments, regional housing authority, conservancy district or other special district or special purpose government; and

O. "retiree" means a person who:

(1) is receiving:

(a) a disability or normal retirement benefit or survivor's benefit pursuant to the Educational Retirement Act;

(b) a disability or normal retirement benefit or survivor's benefit pursuant to the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or

(c) a disability or normal retirement benefit or survivor's benefit pursuant to the retirement program of an independent public employer to which that employer has made periodic contributions; or

(2) is not receiving a survivor's benefit but is the eligible dependent of a person who received a disability or normal retirement benefit pursuant to the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act."

Section 2. Section 10-7C-13 NMSA 1978 (being Laws 1990, Chapter 6, Section 13, as amended) is amended to read:

"10-7C-13. PAYMENT OF PREMIUMS ON HEALTH CARE

PLANS.--

A. Each eligible retiree shall pay a monthly premium for the basic plan in an amount set by the board not to exceed fifty dollars (\$50.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed nine percent until fiscal year 2008 after which the increases shall not exceed the authority's group health care trend. In addition to the monthly premium for the basic plan, each current retiree and nonsalaried eligible participating entity governing authority member who becomes an eligible retiree shall also pay monthly an additional participation fee set by the board. That fee shall be five dollars (\$5.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed nine percent until fiscal year 2008 after which the increases shall not exceed the authority's group health care trend. The additional monthly participation fee paid by the current retirees and nonsalaried eligible participating entity governing authority members who become eligible retirees shall be a consideration and a condition for being permitted to participate in the Retiree Health Care Act. A legislative member shall pay a monthly premium for any selected plan equal to one-twelfth of the annual cost of the claims and administrative costs of that plan allocated to the member by the board. In addition, a legislative member shall pay the additional monthly participation fee set by the board pursuant to this subsection as a consideration and condition for participation in the Retiree Health Care Act. Eligible dependents shall pay monthly premiums in amounts that with other money appropriated to the fund shall cover the cost of the basic plan for the eligible dependents.

B. Eligible retirees and eligible dependents shall pay monthly premiums to cover the cost of the optional plans that they elect to receive, and the board shall adopt rules for the collection of additional premiums from eligible retirees and eligible dependents participating in the optional plans. An eligible retiree or eligible dependent may authorize the authority in writing to deduct the amount of these premiums from the monthly annuity payments, if applicable.

C. The participating employers, active employees and retirees are responsible for the financial viability of the program. The overall financial viability is not an additional financial obligation of the state.

D. For eligible retirees who become eligible for participation on or after July 1, 2001, the board may determine monthly premiums based on the retirees' years of credited service with participating employers."

Section 3. Section 10-11-8 NMSA 1978 (being Laws 1987, Chapter 253, Section 8, as amended) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--BENEFITS CONTINUED--EMPLOYER CONTRIBUTIONS.--

A. A member may retire upon fulfilling the following requirements:

(1) a written application for normal retirement, in the form prescribed by the association, is filed with the association prior to the selected date of retirement;

(2) employment is terminated with all employers covered by any state system or the educational retirement system prior to the selected date of retirement;

(3) the member selects an effective date of retirement that is the first day of a calendar month; and

(4) the member meets the age and service credit requirement for normal retirement specified in the coverage plan applicable to the member.

B. The amount of normal retirement pension is determined in accordance with the coverage plan applicable to the member.

C. A retired member may be subsequently employed by an affiliated public employer if the following conditions apply:

(1) the member has not been employed as an employee of an affiliated public employer for at least ninety consecutive days from the date of retirement to the commencement of employment or re-employment with an affiliated public employer. If the retired member returns to employment without first completing ninety consecutive days of retirement, the retired member shall remove himself from retirement;

(2) a retired member who returns to employment shall be required to make contributions to the fund as specified in the Public Employees Retirement Act. The affiliated public employer's contributions as specified in that act or as adjusted for full actuarial cost at the determination of the association shall be paid to the fund; and

(3) a retired member who returns to employment during retirement pursuant to this subsection is entitled to receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's re-employment with an affiliated public employer.

D. The pension of a member who has three or more years of service credit under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension. The pension of a member who has service credit under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results

in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension, provided the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed. The provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan. "Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit requirement of this subsection."

Section 4. Section 10-11-39 NMSA 1978 (being Laws 1987, Chapter 253, Section 39) is amended to read:

"10-11-39. STATE LEGISLATOR MEMBER COVERAGE PLAN 1--
APPLICABILITY.--State legislator member coverage plan 1 is applicable to state legislators and lieutenant governors who served terms of office that ended on or before December 31, 2002."

Section 5. Section 10-11-41 NMSA 1978 (being Laws 1987, Chapter 253, Section 41) is amended to read:

"10-11-41. STATE LEGISLATOR MEMBER COVERAGE PLAN 1--AMOUNT OF
PENSION--FORM OF PAYMENT A.--

A. Prior to January 1, 2004, under state legislator member coverage plan 1, the annual amount of pension under form of payment A is equal to two hundred fifty dollars (\$250) multiplied by credited service as a legislator or lieutenant governor, if the member served as legislator or lieutenant governor after December 31, 1959 and his service ended on or before December 31, 2002.

B. Under state legislator member coverage plan 1, the annual amount of pension under form of payment A is equal to forty dollars (\$40.00) multiplied by credited service as a legislator or lieutenant governor, if all service as a legislator or lieutenant governor is prior to January 1, 1960.

C. After December 31, 2003, under state legislator member coverage plan 1, the annual amount of pension under form of payment A is equal to:

(1) the amount in Subsection A of this section if the member makes no additional contributions pursuant to Subsection B of Section 10-11-42 NMSA 1978;
or

(2) five hundred dollars (\$500) multiplied by the years of credited service as a legislator or lieutenant governor, if the state legislator member makes additional contributions by December 31, 2003 pursuant to Subsection B of Section 10-11-42 NMSA 1978."

Section 6. Section 10-11-42 NMSA 1978 (being Laws 1987, Chapter 253, Section 42) is amended to read:

"10-11-42. STATE LEGISLATOR MEMBER COVERAGE PLAN 1--MEMBER CONTRIBUTION RATE.--

A. Prior to January 1, 2004, a member under state legislator member coverage plan 1 shall contribute one hundred dollars (\$100) for each year of credited service earned after December 31, 1959.

B. To be eligible for the pension amount in Paragraph (2) of Subsection C of Section 10-11-41 NMSA 1978, a member under state legislator member coverage plan 1 must contribute one hundred dollars (\$100) for each year of credited service earned after December 31, 1959 and must make that required contribution no later than December 31, 2003."

Section 7. A new section of the Public Employees Retirement Act is enacted to read:

"STATE LEGISLATOR MEMBER COVERAGE PLAN 2--APPLICABILITY.--State legislator member coverage plan 2 is applicable to state legislators who receive no salary for their legislative service and lieutenant governors who serve terms of office that end after December 31, 2002. To be covered under state legislator member coverage plan 2, a state legislator or lieutenant governor must elect to be a member no later than one hundred eighty days after first taking office or, for state legislators and the lieutenant governor serving on July 1, 2003, within one hundred eighty days of that date."

Section 8. A new section of the Public Employees Retirement Act is enacted to read:

"STATE LEGISLATOR MEMBER COVERAGE PLAN 2--AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT.--Under state legislator member coverage plan 2, the age and service requirements for normal retirement are:

A. age sixty-five years or older and five or more years of credited service;
or

B. any age and ten or more years of credited service."

Section 9. A new section of the Public Employees Retirement Act is enacted to read:

"STATE LEGISLATOR MEMBER COVERAGE PLAN 2--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under state legislator member coverage plan 2, the annual amount of pension under form of payment A is equal in any calendar year to eleven percent of the per diem rate in effect, pursuant to Section 2-1-8 NMSA 1978, on December 31 of the calendar year that the legislator or lieutenant governor retires multiplied by sixty and further multiplied by credited service as a legislator or lieutenant governor. A pension paid under state legislator member coverage plan 2 shall be adjusted pursuant to Section 10-11-118 NMSA 1978 for a legislator or lieutenant governor who has been retired for at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted."

Section 10. A new section of the Public Employees Retirement Act is enacted to read:

"STATE LEGISLATOR MEMBER COVERAGE PLAN 2--MEMBER CONTRIBUTION RATE.--A member under state legislator member coverage plan 2 shall contribute an amount equal to five hundred dollars (\$500) for each year of credited service less the amount of any prior contributions made by the member for that credited service."

Section 11. A new section of the Public Employees Retirement Act is enacted to read:

"STATE LEGISLATOR MEMBER COVERAGE PLAN 2--STATE CONTRIBUTION RATE.--The state shall contribute amounts sufficient to finance the membership of members under state legislator member coverage plan 2 on an actuarial reserve basis."

Section 12. A new section of the Public Employees Retirement Act is enacted to read:

"STATE LEGISLATOR MEMBER COVERAGE PLAN 2--CONTRIBUTIONS FOR SERVICE PRIOR TO 2003.--To be eligible for state legislator member coverage plan 2, a state legislator or lieutenant governor shall make the necessary contributions by December 31, 2004 for years of credited service earned prior to January 1, 2003, in an amount that totals five hundred dollars (\$500) for each year of credited service."

Section 13. LEGISLATIVE RETIREMENT FUND.--The "legislative retirement fund" is created in the state treasury. The fund shall consist of money distributed, transferred or otherwise accruing to the fund. Money in the fund may be appropriated by the legislature

to finance state legislator member coverage plan 2 pursuant to the Public Employees Retirement Act. Income from investment of the fund shall accrue to the fund, and balances in the fund at the end of any fiscal year shall not revert to the general fund.

Section 14. EFFECTIVE DATE--CONTINGENCY.--

A. Except as provided in Subsection B of this section, the effective date of the provisions of this act is July 1, 2003.

B. This act is contingent upon the enactment into law of Senate Bill 621 or a substantially similar bill of the first session of the forty-sixth legislature. If no such bill is enacted into law, the provisions of this act

shall not become effective.

SENATE BILL 620, AS AMENDED,

APPROVED WITHOUT SIGNATURE

MARCH 22, 2003. SEE ART. 4,

SECTION 22, N.M. CONST.

CHAPTER 86

CHAPTER 86, LAWS 2003

AN ACT

RELATING TO TAXATION; ENACTING THE OIL AND GAS PROCEEDS WITHHOLDING TAX ACT; REQUIRING WITHHOLDING FROM PAYMENTS OF OIL AND GAS PROCEEDS TO NONRESIDENTS AND CERTAIN OTHER PERSONS; MAKING A DISTRIBUTION TO THE LEGISLATIVE RETIREMENT FUND.

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

Section 1. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION TO LEGISLATIVE RETIREMENT FUND.--

A. A distribution pursuant to Section 7-1-6.1

NMSA 1978 shall be made to the legislative retirement fund in an amount equal to two hundred thousand dollars (\$200,000) or, if larger, one-twelfth of the amount necessary to pay out the retirement benefits due under state legislator member coverage plan 2 and Paragraph (2) of Subsection C of Section 10-11-42 NMSA 1978 for the calendar year.

B. In December 2003 and in each December thereafter, the public employees retirement association, with the assistance of the legislative council service, shall determine the amount of those retirement benefits for the succeeding calendar year. If the monthly average exceeds two hundred thousand dollars (\$200,000), the association shall notify immediately the department of the average amount. That average amount shall be the amount distributed pursuant to Subsection A of this section as of the end of each month of the twelve consecutive months beginning with the December in which the determination was made."

Section 2. 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.

F. For the purposes of this section, the amount of tax deducted and withheld with respect to a taxpayer by a remitter under the Oil and Gas Proceeds Withholding Tax Act shall be deemed a payment of estimated tax. An equal amount 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."

Section 3. Section 7-3-12 NMSA 1978 (being Laws 1999, Chapter 14, Section 3, as amended) is amended to read:

"7-3-12. INFORMATION RETURN REQUIRED FROM PASS-THROUGH ENTITY--WITHHOLDING.--

A. A pass-through entity doing business in this state shall file an annual information return with the department on or before the due date of the entity's federal return for the taxable year. The information return shall be signed by the business manager or one of the owners of the pass-through entity.

B. The information return required by this section shall contain all information required by the department, including:

- (1) the pass-through entity's gross income;
- (2) the pass-through entity's net income;
- (3) the amount of each owner's share of the pass-through entity's net income; and
- (4) the name, address and tax identification number of each owner entitled to a share of net income.

C. A pass-through entity shall provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act with respect to the owner's share of net income.

D. The pass-through entity shall deduct and withhold from each nonresident owner's share of net income an amount equal to the owner's share of net income multiplied by a rate set by department regulation. In the case of an owner that is an individual or entity not taxed as a corporation for federal income tax purposes for the taxable year, the rate shall not exceed the rate for composite returns. In the case of an owner that is a corporation or other entity taxed as a corporation for the taxable year, the rate shall not exceed the maximum rate for corporate income tax.

E. The provisions of Subsection D of this section shall not apply with regard to:

- (1) the share of net income of a nonresident owner that has executed an agreement in accordance with regulations or instructions of the department that the owner will report and pay tax, if required, on its own return pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act; or

(2) oil and gas proceeds subject to the Oil and Gas Proceeds Withholding Tax Act.

F. Amounts deducted from the owner's share of net income under the provisions of this section shall be a collected tax. No owner shall have a right of action against the pass-through entity for any amount deducted and withheld from the owner's share of net income."

Section 4. A new Section 7-3A-1 NMSA 1978 is enacted to read:

"7-3A-1. SHORT TITLE.--Chapter 7, Article 3A NMSA 1978 may be referred to as the "Oil and Gas Proceeds Withholding Tax Act"."

Section 5. A new Section 7-3A-2 NMSA 1978 is enacted to read:

"7-3A-2. DEFINITIONS.--As used in the Oil and Gas Proceeds Withholding Tax Act:

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

B. "oil and gas" means crude oil, natural gas, liquid hydrocarbons or any combination thereof, or carbon dioxide;

C. "oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas production or in the cash value of that production, subject to all taxes withheld therefrom pursuant to law; "oil and gas proceeds" excludes "net profits interest" and other types of interest the extent of which cannot be determined with reference to a specified share of the oil and gas production;

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

E. "remittee" means a person that is entitled to payment of oil and gas proceeds by a remitter; and

F. "remitter" means a person that pays oil and gas proceeds to any remittee."

Section 6. A new Section 7-3A-3 NMSA 1978 is enacted to read:

"7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS.--

A. Except as otherwise provided in this section, a remitter shall deduct and withhold from each payment of oil and gas proceeds being made to a remittee an amount equal to the rate specified in Subsection C of this section multiplied by the gross amount that otherwise would have been payable to the remittee.

B. The obligation to deduct and withhold from payments as provided in Subsection A of this section does not apply to payments that are made to:

(1) remittees with a New Mexico address as shown on internal revenue service form 1099-MISC or successor form;

(2) the United States, this state or any agency, instrumentality or political subdivision of either;

(3) any federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof; or

(4) organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

C. The rate of withholding is six and three-fourths percent for the period October 1, 2003 through December 31, 2004. Thereafter the rate shall be set by department regulation; provided that the rate may not exceed the higher of the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year or the maximum bracket rate set by Section 7-2A-5 NMSA 1978 for the taxable year; and provided further that remitters shall be given ninety days' notice of a change in the rate.

D. If the amount to be withheld from a payment to a remittee is less than ten dollars (\$10.00), no withholding is required."

Section 7. A new Section 7-3A-4 NMSA 1978 is enacted to read:

"7-3A-4. DEDUCTIONS CONSIDERED TAXES.--Amounts deducted under the provisions of the Oil and Gas Proceeds Withholding Tax Act are a collected tax. A remittee who receives payment of oil and gas proceeds does not have a right of action against the remitter for the amount deducted and withheld from the oil and gas proceeds."

Section 8. A new Section 7-3A-5 NMSA 1978 is enacted to read:

"7-3A-5. REMITTER LIABLE FOR AMOUNTS DEDUCTED AND WITHHELD--EXCEPTIONS.--Every remitter is liable for amounts required to be deducted and

withheld by the Oil and Gas Proceeds Withholding Tax Act regardless of whether the amounts were in fact deducted and withheld, except that:

A. if the remitter fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid, the remitter shall not be liable for those amounts not deducted and withheld; or

B. if the remitter's failure to deduct and withhold the required amounts is due to reasonable cause, such as reliance on addresses supplied by remittees, the remitter shall not be liable for amounts not deducted and withheld."

Section 9. A new Section 7-3A-6 NMSA 1978 is enacted to read:

"7-3A-6. DATE PAYMENT DUE--FORM.--

A. Amounts withheld under the provisions of the Oil and Gas Proceeds Withholding Tax Act are due on or before the twenty-fifth day of the month following the end of the calendar quarter when the taxes were required to be withheld.

B. The amount withheld shall be remitted on a form and in a manner required by the department, provided that amounts withheld and remitted from oil and gas proceeds are kept distinct from every other tax or withheld amount."

Section 10. A new Section 7-3A-7 NMSA 1978 is enacted to read:

"7-3A-7. STATEMENTS OF WITHHOLDING.--

A. Every remitter shall file an annual statement of withholding for each remittee. This statement shall be in a form prescribed by the department and shall be filed with the department on or before the last day of February of the year following that for which the statement is made. It shall include the total oil and gas proceeds paid to the remittee and the total amount of tax withheld for the calendar year. The department shall compile each year the annual statements received from the remitters and compare the compilation with the records of individuals, estates or trusts filing income tax returns.

B. A copy of the annual statement of withholding shall be furnished to the remittee by the remitter on or before February 15 of the year following the year for which the statement is made."

Section 11. A new Section 7-3A-8 NMSA 1978 is enacted to read:

"7-3A-8. WITHHELD AMOUNTS CREDITED AGAINST INCOME TAX.--The entire amount of oil and gas proceeds upon which the tax was deducted and withheld shall be included in the base income of the remittee for purposes of the Income Tax Act and the Corporate Income and Franchise Tax Act. The amount of tax deducted and withheld pursuant to the Oil and Gas Proceeds Withholding Tax Act during the taxable

year shall be credited against any income tax or corporate income tax due from the remittee."

Section 12. A new Section 7-3A-9 NMSA 1978 is enacted to read:

"7-3A-9. INTERPRETATION OF ACT--ADMINISTRATION AND ENFORCEMENT OF ACT.--

A. The department shall interpret the provisions of the Oil and Gas Proceeds Withholding Tax Act.

B. The department shall administer and enforce the Oil and Gas Proceeds Withholding Tax Act, and the Tax Administration Act applies to the administration and enforcement of the Oil and Gas Proceeds Withholding Tax Act."

Section 13. APPLICABILITY.--The provisions of Section 1 of this act apply to distributions as of November 30, 2003 and thereafter.

Section 14. EFFECTIVE DATES.--

A. The effective date of the provisions of Section 1 of this act is November 1, 2003.

B. Except as provided in Subsection C of this section, the effective date of the provisions of Sections 2 through 12 of this act is October 1, 2003.

C. This act is contingent upon the enactment into law of Senate Bill 620 or a substantially similar bill of the first session of the forty-sixth legislature. If no such bill is enacted into law, the provisions of this act shall not become effective.

SENATE CORPORATIONS AND TRANSPORTATION

COMMITTEE SUBSTITUTE FOR SENATE BILL 621,

AS AMENDED. APPROVED WITHOUT SIGNATURE

MARCH 22, 2003. SEE ART. 4, SECTION 22, N.M. CONST.

CHAPTER 87

CHAPTER 87, LAWS 2003

AN ACT

RELATING TO LOCAL GOVERNMENTS; ENACTING THE CONVENTION CENTER FINANCING ACT; AUTHORIZING CERTAIN LOCAL GOVERNMENTAL ENTITIES TO IMPOSE A DAILY FEE ON THE USE OF LODGING FACILITIES; AUTHORIZING QUALIFIED MUNICIPALITIES TO ISSUE BONDS; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Convention Center Financing Act".

Section 2. DEFINITIONS.--As used in the Convention Center Financing Act:

A. "additional municipality" means an incorporated municipality, not a qualified municipality, that is authorized to impose convention center fees pursuant to the Convention Center Financing Act;

B. "convention center fee" means the fee imposed by a local government entity pursuant the Convention Center Financing Act on vendees for the use of lodging facilities;

C. "local governmental entity" means a qualified municipality, a county or an additional municipality authorized by the Convention Center Financing Act to impose convention center fees;

D. "lodging facility" means a hotel, motel or motor hotel, a bed and breakfast facility, an inn, a resort or other facility offering rooms for payment of rent or other consideration;

E. "qualified municipality" means an incorporated municipality that has a population of more than seventy thousand but less than one hundred thousand according to the 2000 federal decennial census located in a class A county;

F. "room" means a unit of a lodging facility, such as a hotel room;

G. "vendee" means a person who rents or pays consideration to a vendor for use of a room; and

H. "vendor" means a person or his agent who furnishes rooms for occupancy for consideration.

Section 3. AUTHORIZED LOCAL GOVERNMENTAL ENTITIES.--The following local governmental entities are authorized to impose convention center fees:

A. a qualified municipality if the governing body of the qualified municipality has enacted an ordinance to impose a convention center fee;

B. a county in which a qualified municipality is located, provided that:

(1) a qualified municipality within the county has enacted an ordinance to impose a convention center fee;

(2) the board of county commissioners of the county has enacted an ordinance to impose a convention center fee;

(3) the qualified municipality and the county have entered into a joint powers agreement pursuant to the Joint Powers Agreements Act to collect the revenue from the convention center fee and to expend the revenue as required in the Convention Center Financing Act; and

(4) the fee shall only apply to lodging facilities located within twenty miles of the corporate limits of the qualified municipality; and

C. an additional municipality located within twenty miles of the corporate limits of a qualified municipality in the same county in which that qualified municipality is located, provided that:

(1) the qualified municipality has enacted an ordinance imposing a convention center fee;

(2) the additional municipality has enacted an ordinance imposing a convention center fee; and

(3) the qualified municipality and the additional municipality have entered into a joint powers agreement pursuant to the Joint Powers Agreements Act to collect the revenue from the convention center fee and to expend the revenue as required by the Convention Center Financing Act.

Section 4. IMPOSITION OF CONVENTION CENTER FEE--USE OF PROCEEDS.--

A. A local governmental entity may impose by ordinance a fee on the use of a room within a lodging facility within the local governmental entity. The fee may be referred to as the "convention center fee". The amount of the convention center fee shall not exceed two dollars fifty cents (\$2.50) per room for each day the room is occupied by a vendee.

B. A convention center fee imposed pursuant to this section shall be reviewed by the governing body of the local governmental entity annually. The local governmental entity shall adjust the amount of the convention center fee by ordinance

to result in an amount of revenue equivalent to the following percentage of the actual operating and maintenance costs for the preceding fiscal year of the convention center to which the revenue from the fee is dedicated pursuant to Subsection E of this section:

(1) through fiscal year 2025, one hundred twenty percent;

(2) for fiscal year 2026, one hundred percent; and

(3) for fiscal year 2027 and subsequent fiscal years, a percentage that is two percent less than the prior fiscal year.

C. If convention center fees imposed are subject to the provisions of a joint powers agreement between two local governmental entities, the local governmental entities that are parties to the joint powers agreement shall jointly determine changes in the rate of convention center fees to be imposed.

D. A qualified municipality shall not decrease the convention center fee while revenue bonds to which the revenue of the convention center fees is pledged remain outstanding.

E. A local governmental entity shall dedicate the revenue from the convention center fee as provided in this subsection at the time that the ordinance imposing the fee is enacted. A local governmental entity that is a party to a joint powers agreement regarding the imposition of a convention center fee shall enact an ordinance that includes the provisions stated in the joint powers agreement and limit the use of the revenue to the following:

(1) costs of acquisition of land for and the design, construction, equipping, furnishing, landscaping, operation and maintenance of a convention center located within the qualified municipality;

(2) payments of principal, interest or prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by the Convention Center Financing Act; and

(3) costs of collecting and otherwise administering the convention center fee; provided that administration costs shall not be paid until all required payments on the revenue bonds issued pursuant to the Convention Center Financing Act are made and that no more than five percent of the revenue collected in any fiscal year shall be used to pay administration costs.

Section 5. EXEMPTIONS.--The convention center fee shall not apply:

A. if a vendee:

(1) has been a permanent resident of the lodging facility for a period of at least thirty consecutive days; or

(2) enters into or has entered into a written agreement for a room at a lodging facility for a period of at least thirty consecutive days;

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

C. to rooms at institutions of the federal government, the state or any political subdivision thereof;

D. to rooms at religious, charitable, educational or philanthropic institutions, including rooms at summer camps operated by such institutions;

E. to clinics, hospitals or other medical facilities;

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

G. if the vendor does not offer at least three rooms at its lodging facility. The convention center fee shall be imposed on the lodging facilities of a vendor that owns three or more lodging facilities within local governmental entities that have imposed a convention center fee, regardless of the number of rooms available for occupancy.

Section 6. COLLECTION OF CONVENTION CENTER FEE.--

A. A vendor providing rooms in a local governmental entity that has imposed a convention center fee shall collect the proceeds on behalf of the local governmental entity and shall act as a trustee for the fees collected.

B. The convention center fee shall be collected from venders in accordance with the ordinance imposing the convention center fee and shall be accounted for separately from the rent fixed by the vendor for rooms.

Section 7. AUDIT OF VENDORS.--A local governmental entity assessing a convention center fee shall include verification of the collection of the correct convention center fee in any audit of a vendor conducted pursuant to Section 3-38-17.1 NMSA 1978.

Section 8. FINANCIAL REPORTING.--The chief executive officer of a local governmental entity assessing a convention center fee shall report to the local government division of the department of finance

and administration on a quarterly basis any expenditure of convention center fee funds.

Section 9. ENFORCEMENT.--

A. An action to enforce the Convention Center Financing Act may be brought by:

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

(2) a vendor who is collecting the proceeds of a convention center fee in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Convention Center Financing Act.

C. The court shall award costs and reasonable attorney fees to the prevailing party in a court action to enforce the provisions of the Convention Center Financing Act.

Section 10. COLLECTION OF DELINQUENCIES.--

A. A local governmental entity shall by ordinance provide that a vendor is liable for the payment of the proceeds of convention center fees that the vendor failed to remit to the local governmental entity. Failure of the vendor to collect the fee is not cause for the local governmental entity to forgive convention center fees due and owed by the vendor. The ordinance shall provide for a civil penalty for each occurrence of failure to remit convention center fees in an amount equal to the greater of ten percent of the amount that was not duly remitted to the local governmental entity or one hundred dollars (\$100).

B. The local governmental entity may bring an action in the district court of the judicial district in which the local governmental entity is located for collection of amounts due, including without limitation, penalties on the amounts due on the unpaid principal at a rate not exceeding one percent per month, the costs of collection and reasonable attorney fees incurred in connection with the court action to collect the unpaid convention center fees.

**Section 11. LIEN FOR CONVENTION CENTER FEE--PAYMENT--
CERTIFICATE OF LIEN.--**

A. The convention center fee assessed by a local governmental entity constitutes a lien in favor of that local governmental entity upon the personal and real

property of the vendor providing lodging facilities in that local governmental entity. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

B. Under process or order of court, a person shall not sell the property of a vendor without first ascertaining from the clerk or treasurer of the local governmental entity in which the vendor is located the amount of any convention center fees due. Convention center fees due the local governmental entity shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

C. The clerk or treasurer of the local governmental entity shall furnish a certificate of lien to a person applying for a certificate showing the amount of all liens in the records of the local governmental entity against any vendor pursuant to the Convention Center Financing Act.

Section 12. ORDINANCE REQUIREMENTS.--The ordinance imposing a convention center fee or any ordinance amending the imposition of a convention center fee shall:

A. state:

- (1) the rate of the convention center fee to be imposed;
- (2) the times, place and method for the payment of the convention center fee proceeds to the local governmental entity;
- (3) the accounts and other records to be maintained in connection with the convention center fee;
- (4) a procedure for making refunds and resolving disputes relating to the convention center fee;
- (5) the procedure for preservation and destruction of records and for their inspection and investigation;
- (6) vendor audit requirements;
- (7) applicable civil and criminal penalties; and
- (8) a procedure of liens, distraint and sales to satisfy those liens;

and

B. provide other rights, privileges, powers, immunities and other details relating to the collection of the convention center fee and the remittance of the proceeds thereof to the local governmental entity.

Section 13. REVENUE BONDS.--

A. Revenue bonds may be issued at any time by a qualified municipality that has imposed a convention center fee to defray wholly or in part the costs authorized in Paragraph (1) of Subsection E of Section 4 of the Convention Center Financing Act. The revenue bonds may be payable from and payment may be secured by a pledge of and lien on the revenue derived from:

(1) the proceeds of the convention center fee of the qualified municipality and the proceeds of the convention center fee of a local governmental entity that has entered into a joint powers agreement with the qualified municipality to impose a convention center fee, the proceeds of which shall be dedicated to the payment of revenue bonds for a convention center in the qualified municipality;

(2) a convention center to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of the convention center;

(3) that portion of the proceeds of the occupancy tax of the qualified municipality available for payment of revenue bonds pursuant to Paragraph (1) of Subsection B of Section 3-38-23 NMSA 1978;

(4) any other legal available revenues of the qualified municipality;
or

(5) a combination of revenues from the sources designated in Paragraphs (1) through (4) of this subsection.

B. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act, and the first interest payment may be for any period authorized in the Public Securities Act.

C. Except as otherwise provided in the Convention Center Financing Act, revenue bonds authorized in that act shall be issued in accordance with the provisions of

Sections 3-31-2 through 3-31-6 NMSA 1978.

Section 14. REFUNDING BONDS.--

A. A qualified municipality having issued revenue bonds as authorized in the Convention Center Financing Act may issue refunding revenue bonds payable from pledged revenues authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the qualified municipality may determine, notwithstanding that the revenue sources or the pledge of such revenues or both are thereby modified.

B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or a part of outstanding bonds of any one or more outstanding bond issues:

(1) for the acceleration, deceleration or other modification of the payment of the obligations, including any capitalization of any interest in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds or otherwise concerning the outstanding bonds; or

(4) for any combination of the purposes specified in Paragraphs (1) through (3) of this subsection.

C. The interest on a bond refunded shall not be increased to a rate in excess of the rate authorized in the Public Securities Act and shall be paid as authorized in that act.

D. Refunding bonds for any other purpose permitted by the Convention Center Financing Act may be issued separately or issued in combination in one series or more.

E. Except as otherwise provided in the Convention Center Financing Act, refunding bonds authorized in that act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

Section 15. PENALTIES.--A local governmental entity shall by ordinance provide for penalties by creating a misdemeanor and imposing a fine of not more than five hundred dollars (\$500) or imprisonment for not more than ninety days or both for a violation by any person of the provisions of the convention center fee ordinance for a failure to pay the fee or to remit the proceeds thereof to the local governmental entity.

SENATE BILL 1, AS AMENDED

CHAPTER 88

CHAPTER 88, LAWS 2003

AN ACT

RELATING TO SPECIAL DISTRICTS; REVISING THE SOIL AND WATER CONSERVATION DISTRICT ACT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 73-20-25 NMSA 1978 (being Laws 1965, Chapter 137, Section 1, as amended) is amended to read:

"73-20-25. SHORT TITLE.--Sections 73-20-25 through 73-20-48 NMSA 1978 may be cited as the "Soil and Water Conservation District Act"."

Section 2. 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 as described in Section 73-20-44 NMSA 1978;

B. "supervisor" means a member of the governing body of a district;

C. "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;

F. "due notice" means the publication or broadcasting of the appropriate information by newspapers of general circulation and, if appropriate, broadcast stations licensed by the federal communications commission, or by other means that meet the requirements of the Open Meetings Act. If print or broadcast media do 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 for the oil, gas and other minerals underlying the land; soil; water; air; vegetation; trees; wildlife; natural beauty; scenery; open space; and human resources, when appropriate;

J. "board of regents" means the board of regents of New Mexico state university; and

K. "registered voter" means a person who is registered to vote in New Mexico pursuant to the provisions of the Election Code."

Section 3. Section 73-20-28 NMSA 1978 (being Laws 1965, Chapter 137, Section 4, as amended) is amended to read:

"73-20-28. SOIL AND WATER CONSERVATION COMMISSION MEMBERS.-- There is created a "soil and water conservation commission" to be composed of seven appointed members and five ex-officio members. The seven appointed members shall be selected by and serve at the pleasure of the governor. Six of the appointed members shall be supervisors and shall be selected and appointed from a panel of three candidates from each region, compiled by the districts of each region and presented by the president of the New Mexico association of conservation districts. One appointed member shall be selected at large and shall be a person interested and active in the conservation or development of natural resources in New Mexico. The five ex-officio members shall serve without vote and shall include:

A. the governor or his designee;

B. the associate director of the cooperative extension service of New Mexico state university or his designee;

C. the associate director of the agricultural experiment station of New Mexico state university or his designee;

D. the state conservationist of the natural resources conservation service of the United States department of agriculture or his designee; and

E. the president of the New Mexico association of conservation districts or his designee."

Section 4. Section 73-20-29 NMSA 1978 (being Laws 1965, Chapter 137, Section 5, as amended) is amended to read:

"73-20-29. SELECTION OF COMMISSION CHAIRMAN--QUORUM-- COMPENSATION--FUNCTION.--

A. Upon the appointment of seven members by the governor, the commission shall organize and designate a chairman, who shall serve at the pleasure of the commission.

B. In the performance of commission functions, a majority of the appointed members shall constitute a quorum; the concurrence of a quorum majority shall be required to carry or to determine any matter of commission business.

C. Members of the commission shall receive no compensation for their services but shall be entitled to be reimbursed in accordance with the provisions of the Per Diem and Mileage Act."

Section 5. 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 COMMISSION.--

A. The supervising officer of any state agency or post-secondary educational institution shall, within the limitations of his budget and the demands of his agency or institution, assign 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 supervisors concerning the experience and activities of all districts and facilitate the exchange of experience and advice among districts;

(3) promote cooperation between 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 resources conservation and development;

(5) disseminate information throughout the state concerning district activities and programs; and

(6) encourage and, within budget limitations, render assistance to district activities and facilitate and encourage the formation of new districts in areas where district organization is desirable.

C. The commission may:

(1) advise the department and the board of regents concerning any matter that in its opinion has a significant impact on or otherwise substantially affects soil and water conservation; and

(2) promulgate rules to carry out the provisions of the Soil and Water Conservation District Act."

Section 6. Section 73-20-33 NMSA 1978 (being Laws 1965, Chapter 137, Section 7, as amended) is amended to read:

"73-20-33. SOIL AND WATER CONSERVATION DISTRICTS--CREATION.--

A. Twenty-five landowners whose land lies within the exterior limits of a geographical area proposed to be organized into a district may petition the commission for the organization of a district. The petition shall state:

(1) the proposed district name;

(2) the need for the proposed district and the manner in which it would be in the interest of the public health, safety and welfare;

(3) by accurate description, supplemented and depicted by an accurate map, the geographical area proposed to be organized into a district; and

(4) a request that:

(a) the commission define the boundaries of the proposed district;

(b) a referendum be held within the boundaries submitting to the voters' determination the question of creating the district; and

(c) if a majority of votes cast are in favor of creating the district, the commission subsequently declare the proposed district be created.

B. If any portion of the same geographical area is described in more than one petition, the commission may consolidate petitions in the manner it deems expedient.

C. In the event of a challenge to the validity of signatures on a petition, the burden of proof shall be on the sponsors of the petition.

D. Within thirty days next succeeding the filing of a petition, the commission shall cause due notice to be given to all affected persons of a hearing scheduled to determine the necessity and desirability of the proposed district and to determine district boundaries, the propriety of the petition and any other relevant questions. All affected or interested persons may attend a commission hearing and shall have the right to be heard. If, upon hearing, it is determined to be desirable to include in a proposed district lands not contemplated by the petition, the hearing shall adjourn, an amended petition shall be required and due notice shall be given to all affected persons.

E. The commission shall determine, at the conclusion of a hearing, whether a proposed district is necessary and desirable. In making its determination of the necessity of a proposed district and in defining district boundaries, the commission shall consider:

(1) the need for the proposed district and its probable effect upon the public health, safety and welfare;

(2) the topography and composition of soils comprising the area of the proposed district;

(3) the distribution of erosion within the proposed district and within surrounding lands;

(4) the prevailing land-use practices; and

(5) the probable effect of the proposed district upon, and its relation to, watersheds, agriculturally productive lands and other extant or proposed districts.

F. The findings of the commission and its final determination shall not be limited solely to an evaluation of the facts adduced at the hearing or those set forth in a petition, but shall be predicated upon all reliable information available to the commission, including reports, studies and other authoritative publications.

G. If the commission finds that a proposed district is necessary and desirable, it shall approve the petition, enter and record its final determination and define the district by legal description. If the commission finds no need for a proposed district, it shall deny the petition and enter and record its final determination. A geographical area or a substantial portion of it may not be the subject of a petition submitted for consideration by the commission more than one time in any calendar year."

Section 7. Section 73-20-34 NMSA 1978 (being Laws 1965, Chapter 137, Section 8, as amended) is amended to read:

"73-20-34. SOIL AND WATER CONSERVATION DISTRICTS--CREATION--REFERENDUM.--

A. When a final determination of the commission that a proposed district is necessary and desirable has been entered and recorded, the commission shall then determine whether the operation of the district is administratively practicable. To assist in this determination, the commission shall call for a referendum on the proposed district within the geographical boundaries of the district as defined by the commission, to be conducted on the next succeeding first Tuesday in February, if practicable. All registered voters residing within the proposed district shall be eligible to vote.

B. The commission shall:

(1) provide for due notice of a referendum within a proposed district;

(2) confirm eligibility of registered voters; and

(3) adopt and publish rules to govern the orderly conduct of a referendum.

C. A referendum may not be held during an interval when valid rules adopted and published by the commission are not in effect.

D. The proposal shall be presented to the voters on ballots that define, in general terms and by legal description, the area encompassed within the proposed district.

E. Informalities or irregularities in the conduct of a referendum shall have no effect upon its result if due notice requirements have been substantially complied with and balloting has been fairly conducted in substantial compliance with the rules adopted and published by the commission.

F. The commission shall publish referendum results and make a final determination of whether the proposed district is administratively practicable; provided, however, in the event that approval of the proposed district is not carried by a majority of votes cast in a referendum, the commission shall deny the petition and shall enter and record its order.

Section 8. Section 73-20-35 NMSA 1978 (being Laws 1965, Chapter 137, Section 9, as amended) is amended to read:

"73-20-35. SOIL AND WATER CONSERVATION DISTRICTS--ORGANIZATION.--

A. Upon the determination that a proposed district is necessary and administratively practicable, the commission shall appoint two interim supervisors who reside within the district who shall be the governing body of the district until an election of supervisors is held. The two interim supervisors shall present to the secretary of state their verified application, stating:

(1) a recital of the proceedings conducted;

(2) that all proceedings were undertaken lawfully and in accordance with the provisions of the Soil and Water Conservation District Act;

(3) the name of the proposed district and its geographical boundaries;

(4) the name and official residence of each applicant together with a certified copy of each appointment evidencing the applicant's right to office; and

(5) the designation of the principal office of the supervisors of the district.

B. The verified application of the two district interim supervisors shall be accompanied by certified copies of the commission's recorded orders of determination that the proposed district is necessary and is administratively practicable.

C. The secretary of state, upon finding the application and its supporting attachments are in substantial compliance with the provisions of this section, shall receive, file and record the application in an appropriate book of record and issue to the applicants, under state seal, a certificate of organization of the district. From the date of issuance of the certificate of organization by the secretary of state, the district shall be a governmental subdivision of the state. In any action or proceeding relating to a district or an act of the district, the certificate of organization of the district shall be admissible in evidence as proof of its contents.

D. If the secretary of state finds the name of a proposed district to be the same as or substantially similar to the name of an existing organized district, he shall certify the fact to the commission. The commission shall, with the assistance of the interim supervisors, select and submit a new name to the secretary of state."

Section 9. Section 73-20-36 NMSA 1978 (being Laws 1978, Chapter 85, Section 1, as amended) is amended to read:

"73-20-36. SOIL AND WATER CONSERVATION DISTRICTS--MODIFICATION OF EXISTING DISTRICTS.--

A. Unless otherwise provided by this section, petitions to modify the boundaries of an existing district shall be subject to the same requirements for notice,

hearing, determination of necessity and desirability, referendum and determination of administrative practicability as are required for petitions for the organization of a district pursuant to the Soil and Water Conservation District Act.

B. Petitions for including additional land within an existing organized district, signed by twenty-five registered voters residing in the district or within the boundaries of the additional land proposed to be included or signed by two thirds of the owners of the additional land proposed to be included, whichever is less, may be filed with the commission. If the petition is signed by two thirds or more of the owners of the additional land proposed to be included in the district, the commission may enter its determinations without hearing or referendum. The commission shall advise the department of all petitions filed pursuant to this section.

C. 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, signed by twenty-five registered voters residing in the district or within the boundaries of the land proposed to be severed or signed by two thirds of the owners of the land proposed to be severed, whichever is greater, may be filed with the commission. If the petition is signed by two thirds or more of the owners of the land to be severed or is submitted by the board of supervisors of each district affected, the commission may enter its determinations without hearing or referendum.

D. Petitions for consolidating two or more districts or for separating an existing district into two or more districts may be filed with the commission by the board of supervisors of each district affected. After due notice, a public hearing shall be held in each district affected. 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 registered voters within the districts prior to the consolidation or division.

E. The commission shall give written notice to the secretary of state of any modification in the defined geographical area of an existing 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 effect as the certificates they supersede.

F. The commission shall supervise reorganization of the affairs of the district when boundaries are modified.

G. In the event a supervisor of a district is disqualified from holding office by the modification of the district, the supervisor shall be deemed to have resigned and a successor shall be appointed to serve the unexpired term by the commission."

Section 10. 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 a district shall be composed of five supervisors who shall be residents of the district and shall be elected; provided, however, two additional supervisors may be appointed to the governing body of each district by the commission in accordance with the provisions of the Soil and Water Conservation District Act. Four elected supervisor positions of each district shall be filled by landowners within the defined geographical area of their district. One elected supervisor position shall be designated supervisor-at-large and the supervisor filling that position may serve the district without landowner qualification.

B. Unless a different time is prescribed by the commission, within thirty days following the issuance of a certificate of organization to the two interim supervisors of a district, declarations of candidacy for supervisors of the district may be filed with the commission. The commission shall give due notice of election for the offices of five district supervisors. All registered voters residing within the district shall be eligible to vote. The commission shall adopt and prescribe regulations governing the conduct of the election, shall determine voter eligibility and shall supervise the election and publish its results. The districts shall bear the expenses of elections; however, the commission shall bear the expenses of the first election of a newly organized district.

C. In the first election of supervisors to serve a newly organized district, two supervisors shall be elected for terms of four years and three supervisors shall be elected for terms of two years. Thereafter, each elected supervisor shall serve a term of four years and shall continue in office until his successor has been elected or appointed and has completed an oath of office. Oaths of office may not be completed prior to July 1 after an election. A vacant unexpired term of the office of an elected supervisor shall be filled by appointment by the remaining supervisors of the district. Two or more vacant unexpired terms occurring simultaneously in the same district shall be filled by appointment by the commission.

D. Appointed interim supervisors may continue to serve as appointed supervisors at the pleasure of the commission or until their successors are otherwise appointed."

Section 11. 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 whose terms end in a calendar year shall be elected on the first Tuesday in February of that year. Elections shall be called,

conducted and returned in accordance with rules adopted and prescribed by the commission.

B. A canvassing board appointed by the commission shall determine the results of a district election, shall certify and publish the results and shall give the commission notice of their canvass within seven days of its completion. A canvass is considered complete when all challenges have been resolved to the satisfaction of the canvassing board.

C. Rules adopted and published by the commission and the election provisions of the Soil and Water Conservation District Act shall be exclusive in the conduct of district elections. The commission may adopt and publish rules to carry out the provisions of the Soil and Water Conservation District Act.

D. By June 15 of each year, the district supervisors may submit to the commission a list of persons interested in the district and who by experience or training are qualified to serve as supervisors. The commission may appoint from the list submitted, or at will, two persons to serve as supervisors if it is the determination of the commission 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 commission by the supervisors by June 15, the commission may appoint at will two supervisors qualified to serve by training or experience. Appointed supervisors shall serve at the pleasure of the commission 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 commission from a list of candidates or at will in accordance with the provisions of this subsection."

Section 12. Section 73-20-39 NMSA 1978 (being Laws 1965, Chapter 137, Section 13, as amended) is amended to read:

"73-20-39. ELECTION OF SUPERVISORS--DISTRICT ZONES.--In adopting and publishing rules for the election of supervisors and the registration of district voters, the commission may, to ensure proper representation of district voters and to facilitate district functions, provide for the geographic zoning of a district. The commission shall provide for the proper and equitable representation for each faction geographically zoned in the district. If a district is divided, or if two or more districts are consolidated, the commission shall provide for the geographic zoning of the resulting district or districts within thirty days after the secretary of state issues the certificate of organization for each new district."

Section 13. Section 73-20-40 NMSA 1978 (being Laws 1965, Chapter 137, Section 14, as amended) is amended to read:

"73-20-40. SELECTION OF SUPERVISOR CHAIRMAN--QUORUM--COMPENSATION.--Within a reasonable time after each district election and after newly

elected supervisors have completed the oath of office, the supervisors of a district shall organize and shall designate a chairman who shall be a supervisor and who shall serve at the pleasure of the supervisors. In the performance of district functions, a majority of supervisors shall constitute a quorum; the concurrence of the quorum majority shall be required to carry or to determine any matter of district business. Supervisors shall not receive compensation for their services but shall be entitled to be reimbursed in accordance with the provisions of the Per Diem and Mileage Act."

Section 14. 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 SUPERVISORS.--

A. Supervisors may employ a secretary and other agents, employees and technical or professional experts as they require and may determine qualifications, compensation and duties applicable to any agent, employee or expert engaged.

B. 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.

C. Supervisors may delegate their powers to one or more supervisors or to one or more district employees, agents or experts.

D. Supervisors shall call upon the county clerk of a county within which all or a part of the district lands are located for advice and assistance with conduct of elections and referenda.

E. 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. Supervisors may invite the legislative body of any municipality or county 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.

F. Supervisors are authorized to adopt and publish rules 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, rules 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 commission a complete report of district proceedings and activities during each fiscal year, including a financial report;

(4) furnish or make available to the commission, upon request, district files and copies of rules, orders, contracts, forms and other documents adopted or employed in conducting district activities; and

(5) call and give due notice of at least one regular meeting of the supervisors each month of the calendar year, unless otherwise approved by the commission.

G. Supervisors and district employees are public employees for the purposes of 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."

Section 15. Section 73-20-42 NMSA 1978 (being Laws 1965, Chapter 137, Section 16, as amended) is amended to read:

"73-20-42. REMOVAL OF SUPERVISORS.--A supervisor may be removed from office by the commission if it appears to the commission, after reasonable notice and impartial hearing, that the supervisor is guilty of misfeasance or malfeasance in office. The office of a supervisor who has missed three consecutive regular meetings of the supervisors may be declared vacant by majority vote of the remaining supervisors. The office of a supervisor who has missed four consecutive regular meetings of the supervisors shall be declared vacant and his successor shall be elected or appointed as in case of any other vacancy."

Section 16. Section 73-20-44 NMSA 1978 (being Laws 1965, Chapter 137, Section 18) is amended to read:

"73-20-44. DISTRICTS--DESCRIPTION--GENERAL POWERS OF DISTRICTS.-
-A "soil and water conservation district", organized under or perpetuated by the provisions of the Soil and Water Conservation District Act, is a governmental subdivision of the state, a public body politic and corporate. By and through its supervisors, a district may:

A. conduct research, investigations and surveys treating soil erosion and floodwater and sediment damage, concerning the conservation, development, utilization and disposal of all waters and relating to control programs and public works necessary to facilitate conservation and development. To prevent duplication of research activities, district investigative programs shall be initiated in cooperation with a governmental unit, if any, conducting or charged with the conduct of research in the same or similar scientific field;

B. publish and disseminate research findings and preventive and control measures relating to resource conservation and development;

C. with the consent and cooperation of the landowner or the state or federal agency administering the land, conduct projects upon land within the district to demonstrate by example the methods by which soil and other natural resources may be conserved, by which soil erosion in the form of blowing and washing may be controlled or prevented and by which flood prevention and the conservation, development, utilization and disposal of water may be carried out; the projects may include, but shall not be limited to, engineering operations, methods of cultivation and variations in land use;

D. assist, contract with and render financial aid to district landowners and state or federal agencies administering land within the district that are engaged in erosion control and prevention projects, flood prevention works or the conservation, development, utilization and disposal of water within the district;

E. make available to district landowners, on such terms as the supervisors may prescribe, tools, machinery, equipment, fertilizer, seeds and other materials to assist the landowners in initiating and developing natural resource conservation and development projects;

F. develop comprehensive plans for natural resource conservation, development and utilization, including flood prevention, control and prevention of soil erosion and the development, utilization and disposal of water; the plans shall be detailed and shall specify as completely as possible the necessary or desirable acts, procedures, performances and avoidances to implement the plan, including engineering specifications, methods of cultivation, cropping programs, tilling practices and land use changes;

G. foster, publish and promote district natural resource development plans and their adoption and development by landowners within the district;

H. acquire or administer the project of any other governmental agency undertaken to provide for the conservation, development and utilization of natural resources within the district;

I. act as agent for any instrumentality or agency of the state or of the federal government in the acquisition, construction, operation or administration of a natural resource conservation, utilization or development project or program within the district; and

J. construct, improve, operate or maintain physical projects and structures necessary or convenient for the performance of any authorized district function."

Section 17. Section 73-20-45 NMSA 1978 (being Laws 1965, Chapter 137, Section 19) is amended to read:

"73-20-45. SPECIFIC POWERS OF DISTRICTS.--A district, by and through its supervisors, is authorized to:

- A. sue and be sued in the name of the district;
- B. adopt an official seal;
- C. contract, convey and make and execute other instruments and documents necessary or convenient to the exercise of district powers;
- D. borrow money and otherwise contract indebtedness for the purposes of the district and, without limitation of the generality of the foregoing, borrow money and accept grants from the United States or from a corporation or agency created or designated by the United States and, in connection with any such loan or grant, enter into agreements as the United States or the corporation or agency may require; and issue its notes or obligations therefor and secure the payment thereof by mortgage, pledge or deed of trust of all or any of its property, assets, rights, privileges, licenses, rights-of-way, easements, revenues or income;
- E. option, as optionee and optioner, and acquire, in any manner, real and personal property or any right or interest in it;
- F. improve, rent, lease and sell district property or any interest in it;
- G. receive, invest and reinvest rents and income from district property and expend rents and income for district purposes; and
- H. accept contributions, gifts and donations and expend and utilize them to further district purposes."

Section 18. Section 73-20-46 NMSA 1978 (being Laws 1965, Chapter 137, Section 20, as amended) is amended to read:

"73-20-46. DISTRICT ASSESSMENTS.--

- A. In the event a district is unable to meet or bear the expense of the duties imposed upon it by the Soil and Water Conservation District Act, the supervisors may adopt a resolution that, to be effective, shall be approved by referendum in the district and that shall provide for an annual levy for a stated period of up to ten years in a stated amount not exceeding one dollar (\$1.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the assessment authorized by this section, on each one thousand dollars (\$1,000)

of net taxable value, as that term is defined in the Property Tax Code, of real property within the district, except that real property within incorporated cities and towns in the district may be excluded. The referendum held to approve or reject the resolution of the supervisors shall be conducted with appropriate ballot and in substantially the same manner as a referendum adopting and approving the creation of a proposed district. After the initial authorization is approved by referendum, the supervisors shall adopt a resolution in each following year authorizing the levy. To extend an assessment beyond the period of time originally authorized and approved by referendum, the supervisors shall adopt a new resolution and the district voters shall approve it in a referendum. The extension shall be for the same period of time as originally approved, but the rate of the tax may be different as long as it does not exceed one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value of real property within the district, except that real property within incorporated municipalities in the district may be excluded. If the district is indebted to the United States or the state or any of their respective agencies or instrumentalities, including the New Mexico finance authority, at the time of the expiration of the original authorization, the supervisors may renew the assessment by resolution for a period not to exceed the maturity date of the indebtedness, and no referendum for that renewal is necessary.

B. A resolution authorized under Subsection A of this section shall not be effective, and neither a referendum nor a levy is authorized, unless the resolution is submitted to and approved in writing by the commission.

C. In the event a resolution of the supervisors is adopted and approved in accordance with the provisions of Subsection A of this section, the supervisors of the district shall certify by the fifteenth of July of each year to the county assessor of each county in which there is situate land subject to the district assessment:

(1) a copy of the resolution of the supervisors;

(2) the results of any referendum held in the year the certification is made; and

(3) a list of landowners of the district and a description of the land owned by each that is subject to assessment.

D. A county assessor shall indicate the information on the tax schedules, compute the assessment and present the district assessment by regular tax bill.

E. The district assessment shall be collected by the county treasurer of each county in which taxable district land is situate in the same manner and at the same time that county ad valorem taxes are levied. The conditions, penalties and rates of interest applicable to county ad valorem taxation apply to the levy and collection of district assessments. A county treasurer shall be entitled to a collection fee equal to the actual costs of collection or four percent of the money collected from the levy of the district assessment, whichever is the lesser.

F. District funds, regardless of origin, shall be transferred to and held by the supervisors and shall be expended for district obligations and functions. The supervisors shall prepare an annual budget and submit it for approval to the commission and to the local government division of the department of finance and administration. All district funds shall be expended in accordance with the approved budgets.

G. In the event the supervisors of a district determine that there are or will be sufficient funds available for the operation of the district for any year for which an assessment is to be levied, they shall, by resolution, direct the assessor of each county in which taxable district land is situate, by July 15 of each year, to decrease the district assessment or to delete the district assessment reflected on the tax schedules.

H. Any levy authorized by the Soil and Water Conservation District Act and any loan or other indebtedness authorized by that act that will require a levy shall be based exclusively on or levied exclusively on the real property in the district, except that real property within incorporated cities and towns may be excluded."

Section 19. Section 73-20-48 NMSA 1978 (being Laws 1965, Chapter 137, Section 22) is amended to read:

"73-20-48. STATE AGENCIES TO COOPERATE.--Agencies, instrumentalities and political subdivisions of this state having jurisdiction over or charged with the administration of public lands situate within the defined geographical area of any district shall cooperate to the fullest extent with the district's supervisors in effectuating district projects and programs. Supervisors shall have free access to enter and perform work upon state public lands lying within their districts; provided, however, supervisors shall not have unqualified access to state public lands that are subject to private dominion under lease or that are developed for, or devoted to, another public use. County clerks of the counties within which all or a part of the district lands are located shall provide advice and assistance with conduct of elections and referenda."

Section 20. REPEAL.--Section 73-20-49 NMSA 1978 (being Laws 1965, Chapter 137, Section 23, as amended) is repealed.

HOUSE BILL 153, AS AMENDED

CHAPTER 89

CHAPTER 89, LAWS 2003

AN ACT

RELATING TO PUBLIC BUILDINGS; AUTHORIZING THE ACQUISITION OF UNIVERSITY SPORTS FACILITIES; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. APPROPRIATION.--Eight million dollars (\$8,000,000) is appropriated from the state building bonding fund to the board of regents of New Mexico state university for expenditure in fiscal years 2004 through 2006 for the acquisition of a university sports facility. The appropriation shall not be made unless:

A. the remaining balance in the fund will be sufficient to service bonds issued or authorized to be issued pursuant to the State Building Bonding Act in fiscal years 2004 through 2006;

B. the appropriation will not impair the bonds to which the state building bonding fund is dedicated; and

C. New Mexico state university has obtained a loan of at least four million dollars (\$4,000,000) from the New Mexico finance authority or provides at least four million dollars (\$4,000,000) from other university bonds or other resources to be used for acquisition of a university sports facility.

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

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 259, AS AMENDED

WITH EMERGENCY CLAUSE, SIGNED MARCH 27, 2003

CHAPTER 90

CHAPTER 90, LAWS 2003

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; INCREASING PENALTIES FOR FELONY DWI OFFENDERS; MANDATING TREATMENT FOR PERSONS CONVICTED A SECOND OR THIRD

TIME FOR DWI; REQUIRING THAT THE CORRECTIONS DEPARTMENT PROVIDE SUBSTANCE ABUSE COUNSELING AND TREATMENT TO FELONY DWI OFFENDERS; COMPLYING WITH FEDERAL LAW REGARDING PROHIBITED BLOOD OR BREATH ALCOHOL CONCENTRATIONS FOR COMMERCIAL DRIVERS; 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 31-18-17 NMSA 1978 (being Laws 1977, Chapter 216, Section 6, as amended) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC SENTENCE.--

A. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction that was part of a separate transaction or occurrence or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by one year. The sentence imposed pursuant to this subsection shall not be suspended or deferred, unless the court makes a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the sentence imposed pursuant to this subsection.

B. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred two prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by four years. The sentence imposed by this subsection shall not be suspended or deferred.

C. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred three or more prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by eight years. The sentence imposed by this subsection shall not be suspended or deferred.

D. As used in this section, "prior felony conviction" means:

(1) a conviction, when less than ten years have passed prior to the instant felony conviction since the person completed serving his sentence or period of probation or parole for the prior felony, whichever is later, for a prior felony committed within New Mexico whether within the Criminal Code or not, but not including a conviction for a felony pursuant to the provisions of Section 66-8-102 NMSA 1978; or

(2) a prior felony, when less than ten years have passed prior to the instant felony conviction since the person completed serving his sentence or period of probation or parole for the prior felony, whichever is later, for which the person was convicted other than an offense triable by court martial if:

(a) the conviction was rendered by a court of another state, the United States, a territory of the United States or the commonwealth of Puerto Rico;

(b) the offense was punishable, at the time of conviction, by death or a maximum term of imprisonment of more than one year; or

(c) the offense would have been classified as a felony in this state at the time of conviction.

E. As used in this section, "nonviolent felony offense" means application of force, threatened use of force or a deadly weapon was not used by the offender in the commission of the offense."

Section 2. Section 66-5-68 NMSA 1978 (being Laws 1989, Chapter 14, Section 17, as amended) is amended to read:

"66-5-68. DISQUALIFICATION.--

A. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than one year if the person:

(1) refuses to submit to a chemical test when requested pursuant to the provisions of the Implied Consent Act; or

(2) is convicted of a violation of:

(a) driving a commercial motor vehicle under the influence of intoxicating liquor or drugs in violation of Section 66-8-102 NMSA 1978, an ordinance of a municipality of this state or the law of another state;

(b) leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of Section 66-7-201 NMSA 1978 or an ordinance of a municipality of this state or the law of another state; or

(c) using a commercial motor vehicle in the commission of any felony.

B. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years if any of the violations specified in Subsection A of this section occur while transporting a hazardous material required to be placarded.

C. The department shall disqualify a person from driving a commercial motor vehicle for life if convicted of two or more violations of any of the offenses specified in Subsection A of this section, or any combination of those offenses, arising from two or more separate incidents, but the secretary may issue regulations establishing guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to a period of not less than ten years. This subsection applies only to those offenses committed after July 1, 1989.

D. The department shall disqualify a person from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.

E. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations or one hundred twenty days if convicted of three serious traffic violations, if the violations were committed while driving a commercial motor vehicle, arising from separate incidents occurring within a three-year period.

F. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than one hundred eighty days nor more than two years if the person is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded pursuant to the federal Hazardous Materials Transportation Act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years nor more than five years if, during any ten-year period, the person is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded pursuant to that act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver.

G. When a person is disqualified from driving a commercial motor vehicle, any commercial driver's license held by that person is invalidated without separate proceeding of any kind and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed.

H. After disqualifying, suspending, revoking or canceling a commercial driver's license, the department shall, within ten days, update its records to reflect that action. After disqualifying, suspending, revoking or canceling a nonresident commercial driver's privileges, the department shall, within ten days, notify the licensing authority of the state that issued the commercial driver's license.

I. For purposes of this section, the term "convicted" includes a license revocation pursuant to the Implied Consent Act or the implied consent act of another state."

Section 3. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for:

(1) a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to drive a vehicle within this state; and

(2) a person who has an alcohol concentration of four one hundredths or more in his blood or breath to drive a commercial motor 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 a 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. A person under first conviction pursuant to 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 pursuant to 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 K of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau 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 pursuant to 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 pursuant to 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 pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to 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, an offender shall be sentenced to a jail term of not less than ninety-six 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, a community service program, a screening program or a 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, a screening program or a 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 conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of eighteen months, six months of which shall not be suspended or deferred or taken under advisement.

H. Upon a fifth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of two years, one year of which shall not be suspended, deferred or taken under advisement.

I. Upon a sixth conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of thirty months, eighteen months of which shall not be suspended, deferred or taken under advisement.

J. Upon a seventh or subsequent conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of three years, two years of which shall not be suspended, deferred or taken under advisement.

K. Upon any conviction pursuant to 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 approved by the department of finance and administration and, if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

L. Upon a second or third conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, not less than a twenty-eight-day inpatient, residential or in-custody substance abuse treatment program approved by the court, not less than a ninety-day outpatient treatment program approved by the court or a drug court program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

M. Upon a felony conviction pursuant to this section, the corrections department shall provide substance abuse counseling and treatment to the offender.

N. Upon a first conviction for aggravated driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection D of this section, as a condition of probation, an offender shall be required to have an ignition interlock

device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

O. Upon a first conviction for driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection A, B or C of this section, as a condition of probation, an offender may be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

P. Upon any subsequent conviction pursuant to this section, as a condition of probation, a subsequent offender shall be required to have an ignition interlock device installed and operating for a period of at least one year on all motor vehicles driven by the subsequent offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the subsequent offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If a subsequent offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the subsequent offender may be in violation of the terms and conditions of his probation.

Q. 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.

R. A conviction pursuant to 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, and that prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

S. In addition to any other fine or fee that 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.

T. 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 4. Section 66-8-102.1 NMSA 1978 (being Laws 1982, Chapter 102, Section 2, as amended) is amended to read:

"66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the complaint or information alleges a violation of Section 66-8-102 NMSA 1978, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 66-8-102 NMSA 1978, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to the Implied Consent Act disclose that the blood or breath of the person charged contains an alcohol concentration of:

A. eight one hundredths or more; or

B. four one hundredths or more if the person charged is driving a commercial motor vehicle."

Section 5. Section 66-8-110 NMSA 1978 (being Laws 1978, Chapter 35, Section 518, as amended) is amended to read:

"66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

A. The results of a test performed pursuant to the Implied Consent Act may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of less than four one hundredths, it shall be presumed that the person was not under the influence of intoxicating liquor;

(2) an alcohol concentration of at least four one hundredths but less than eight one hundredths:

(a) no presumption shall be made that the person either was or was not under the influence of intoxicating liquor, unless the person is driving a commercial motor vehicle; and

(b) the amount of alcohol in the person's blood may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor; or

(3) an alcohol concentration of four one hundredths or more and the person is driving a commercial vehicle, it shall be presumed that the person is under the influence of intoxicating liquor.

C. The arresting officer shall charge the person tested with a violation of Section 66-8-102 NMSA 1978 when the blood or breath of the person contains an alcohol concentration of:

(1) eight one hundredths or more; or

(2) four one hundredths or more if the person is driving a commercial motor vehicle.

D. When a person is less than twenty-one years of age and the blood or breath of the person contains an alcohol concentration of two one hundredths or more, the person's driving privileges shall be revoked pursuant to the provisions of the Implied Consent Act.

E. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor, the trial judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter."

Section 6. Section 66-8-111 NMSA 1978 (being Laws 1978, Chapter 35, Section 519, as amended) is amended to read:

"66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to

chemical tests designated by the law enforcement agency as provided in Section 66-8-107 NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 66-8-107 NMSA 1978 upon his finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a felony prosecution.

B. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs and that, upon his request, the person refused to submit to a chemical test after being advised that failure to submit could result in revocation of his privilege to drive, shall revoke the person's New Mexico driver's license or any nonresident operating privilege for a period of one year or until all conditions for license reinstatement are met, whichever is later.

C. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor and that the person submitted to chemical testing pursuant to Section 66-8-107 NMSA 1978 and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age, shall revoke the person's license or permit to drive or his nonresident operating privilege for a period of:

(1) ninety days or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) six months or until all conditions for license reinstatement are met, whichever is later, if the person is less than twenty-one years of age and has not previously had his license revoked pursuant to the provisions of this section, notwithstanding any provision of the Children's Code; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the person has previously had his license revoked pursuant to the provisions of this section, notwithstanding the provisions of Paragraph (1) or (2) of this subsection or any provision of the Children's Code.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. If the person subject to the revocation provisions of this section is a resident or will become a resident within one year and is without a license to operate a motor vehicle in this state, the department shall deny the issuance of a license to him for the appropriate period of time as provided in Subsections B and C of this section.

F. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this section, shall be sworn to by the officer or shall contain a declaration substantially to the effect: "I hereby declare under penalty of perjury that the information given in this statement is true and correct to the best of my knowledge." A law enforcement officer who signs a statement, knowing that the statement is untrue in any material issue or matter, is guilty of perjury as provided in Section 66-5-38 NMSA 1978."

Section 7. Section 66-8-111.1 NMSA 1978 (being Laws 1984, Chapter 72, Section 7, as amended) is amended to read:

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

Section 8. Section 66-8-112 NMSA 1978 (being Laws 1978, Chapter 35, Section 520, as amended) is amended to read:

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

A. The effective date of revocation pursuant to Section 66-8-111 NMSA 1978 is twenty days after notice of revocation or, if the person whose driver's license or

privilege to drive is being revoked or denied requests a hearing pursuant to this section, the date that the department issues the order following that hearing. The date of notice of revocation is:

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

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

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

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

D. At the hearing, the department or its agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

E. The hearing shall be limited to the issues:

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

(2) whether the person was arrested;

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

(4) whether:

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

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

(5) whether:

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

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

F. The department shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the department finds that:

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

(2) the person was arrested;

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

(4) either:

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

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

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

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

I. Any person less than eighteen years of age shall have results of his hearing forwarded by the department to his parent, guardian or custodian."

Section 9. REPEAL.--Section 66-5-68.1 NMSA 1978 (being Laws 1992, Chapter 13, Section 9) is repealed.

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

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 117, AS AMENDED WITH

EMERGENCY CLAUSE, SIGNED MARCH 28, 2003

CHAPTER 91

CHAPTER 91, LAWS 2003

AN ACT

RELATING TO HEALTH CARE; ENACTING THE SEXUAL ASSAULT SURVIVORS EMERGENCY CARE ACT; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Sexual Assault Survivors Emergency Care Act".

Section 2. DEFINITIONS.--As used in the Sexual Assault Survivors Emergency Care Act:

A. "department" means the department of health;

B. "emergency care for sexual assault survivors" means medical examinations, procedures and services provided by a hospital to a sexual assault survivor following an alleged sexual assault;

C. "emergency contraception" means a drug approved by the federal food and drug administration that prevents pregnancy after sexual intercourse;

D. "hospital" means a facility providing emergency or urgent health care;

E. "medically and factually accurate and objective" means verified or supported by the weight of research conducted in compliance with accepted scientific methods and standards; published in peer-reviewed journals; and recognized as accurate and objective by leading professional organizations and agencies with relevant expertise in the field of obstetrics and gynecology, such as the American college of obstetricians and gynecologists;

F. "sexual assault" means the crime of criminal sexual penetration; and

G. "sexual assault survivor" means a female who alleges or is alleged to have been sexually assaulted and who presents as a patient to a hospital.

Section 3. EMERGENCY CARE FOR SEXUAL ASSAULT SURVIVORS--STANDARD OF CARE.--

A. A hospital that provides emergency care for sexual assault survivors shall:

(1) provide each sexual assault survivor with medically and factually accurate and objective written and oral information about emergency contraception;

(2) orally and in writing inform each sexual assault survivor of her option to be provided emergency contraception at the hospital; and

(3) provide emergency contraception at the hospital to each sexual assault survivor who requests it.

B. The provision of emergency contraception pills shall include the initial dose that the sexual assault survivor can take at the hospital as well as the subsequent dose that the sexual assault survivor may self-administer twelve hours following the initial dose.

Section 4. TRAINING.--No later than September 30, 2003:

A. a hospital shall ensure that all personnel who provide care to sexual assault survivors are trained to provide medically and factually accurate and objective information about emergency contraception; and

B. the department shall adopt rules regulating the training to be provided by hospitals pursuant to the Sexual Assault Survivors Emergency Care Act to personnel who provide emergency care for sexual assault survivors.

Section 5. ENFORCEMENT--ADMINISTRATIVE FINES.--

A. Complaints of failure to provide services required by the Sexual Assault Survivors Emergency Care Act may be filed with the department.

B. The department shall immediately investigate every complaint it receives regarding failure of a hospital to provide services required by the Sexual Assault Survivors Emergency Care Act to determine the action to be taken to satisfy the complaint.

C. The department shall compile all complaints it receives regarding failure to provide services required by the Sexual Assault Survivors Emergency Care Act and shall retain the complaints for at least ten years so that they can be analyzed for patterns of failure to provide services pursuant to that act.

D. If the department determines that a hospital has failed to provide the services required in the Sexual Assault Survivors Emergency Care Act, the department shall:

(1) issue a written warning to the hospital upon receipt of a complaint that the hospital is not providing the services required by the Sexual Assault Survivors Emergency Care Act; and

(2) based on the department's investigation of the first complaint, require the hospital to correct the deficiency leading to the complaint.

E. If after the issuance of a written warning to the hospital pursuant to Subsection D of this section, the department finds that the hospital has failed to provide services required by the Sexual Assault Survivors Emergency Care Act, the department shall, for a second through fifth complaint, impose on the hospital a fine of one thousand dollars (\$1,000):

(1) per sexual assault survivor who is found by the department to have been denied medically and factually accurate and objective information about emergency contraception or who is not offered or provided emergency contraception; or

(2) per month from the date of the complaint alleging noncompliance until the hospital provides training pursuant to the rules of the department.

F. For the sixth and subsequent complaint against the same hospital if the department finds the hospital has failed to provide services required by the Sexual Assault Survivors Emergency Care Act, the department shall impose an intermediate sanction pursuant to Section 24-1-5.2 NMSA 1978 or suspend or revoke the license of the hospital issued pursuant to the Public Health Act.

Section 6. SEVERABILITY.--If any part or application of the Sexual Assault Survivors Emergency Care Act is held invalid, the remainder of its application to other situations or persons shall not be affected.

HOUSE JUDICIARY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 119,

WITH CERTIFICATE OF CORRECTION

CHAPTER 92

CHAPTER 92, LAWS 2003

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; MAKING CHANGES TO THE ADMINISTRATION OF THE INTERLOCK DEVICE FUND; AMENDING A SECTION OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 66-8-102.3 NMSA 1978 (being Laws 2002, Chapter 82, Section 2) is amended to read:

"66-8-102.3. IMPOSING A FEE--CREATING A FUND.--

A. A fee is imposed on all persons who provide ignition interlock devices to a person convicted of driving while under the influence of intoxicating liquor or drugs pursuant to Section 66-8-102 NMSA 1978 or a person whose driver's license is revoked pursuant to the provisions of the Implied Consent Act, in the amount of ten percent of

the amount charged to lease, install, service and remove each ignition interlock device for a person convicted pursuant to Section 66-8-102 NMSA 1978 or whose driver's license is revoked pursuant to the provisions of the Implied Consent Act and shall be paid monthly to the local government division of the department of finance and administration.

B. The "interlock device fund" is created in the state treasury. The fee imposed pursuant to Subsection A of this section shall be distributed to the fund by the local government division of the department of finance and administration.

C. All money in the interlock device fund is appropriated to the local government division of the department of finance and administration to cover the costs of installing, leasing for the initial four months and removing ignition interlock devices for indigent people who are required, pursuant to convictions under Section 66-8-102 NMSA 1978 or driver's license revocations pursuant to the provisions of the Implied Consent Act, to install those devices in their vehicles. Indigency shall be determined by the sentencing court.

D. Any balance remaining in the interlock device fund shall not revert to the general fund at the end of any fiscal year.

E. The interlock device fund shall be administered by the local government division of the department of finance and administration."

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

immediately.

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 266, AS AMENDED,

WITH EMERGENCY CLAUSE

SIGNED MARCH 28, 2003

CHAPTER 93

CHAPTER 93, LAWS 2003

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE AMBER ALERT LAW; PROVIDING FOR AN AMBER ALERT NOTIFICATION PLAN FOR THE PURPOSE OF RAPID DISSEMINATION OF INFORMATION RELATING TO ABDUCTION OF CHILDREN; PROVIDING A CRIMINAL PENALTY; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE.--This act may be cited as the "AMBER Alert Law".

Section 2. DEFINITIONS.--As used in the AMBER Alert Law:

A. "AMBER alert" means a declaration by the authorized requester that an abduction has occurred and that notifications and broadcasts should be made pursuant to the AMBER alert notification plan;

B. "authorized requester" means the person designated by the chief of the state police to implement the AMBER alert notification plan;

C. "chief of the state police" means the director of the New Mexico state police division of the department of public safety;

D. "lead station" means an AM radio station that has been designated as the "state primary station" by the federal communications commission for the emergency alert system; and

E. "state police" means the New Mexico state police division of the department of public safety.

Section 3. STATE POLICE--AMBER ALERT NOTIFICATION PLAN--DECLARATION OF AMBER ALERT.--

A. The state police shall develop and implement an AMBER alert notification plan for the purpose of disseminating, as rapidly as possible, information about a child abduction so that law enforcement agencies and citizens throughout the state may be aware and vigilant. The plan shall:

(1) provide a procedure for notifying the lead station by the authorized requester that an AMBER alert has been declared. The procedure shall include codes for use by the authorized requester in communicating with the lead station to prevent false alerts;

(2) provide a procedure in which other state and private print, radio, television or other media may alert the members of the public of the abduction;

(3) include a procedure for notifying the radio communications bureau of the communications division of the general services department that an AMBER alert has been declared. The bureau shall immediately transmit the notification and related information to all state field operations employees so that they may be aware and vigilant in the course of their regular activities;

(4) include a procedure for notifying all local and federal law enforcement agencies that an AMBER alert has been declared; and

(5) provide for dissemination of information about a child or a child's abductor to the lead station, the radio communications bureau and local law enforcement agencies when an AMBER alert has been declared.

B. The state police shall distribute the AMBER alert notification plan to all local law enforcement agencies and provide such training and other assistance as is necessary to ensure that the plan can be properly implemented.

C. The authorized requester may declare an AMBER alert when the requester has reason to believe that:

(1) a child under the age of eighteen has been abducted by an unrelated person;

(2) the child is in imminent danger of serious bodily harm or death;
and

(3) there is specific information available about the child or the child's abductor that may assist in an expedient and successful end to the abduction.

D. Once an AMBER alert has been declared, only the authorized requester may terminate the AMBER alert.

Section 4. AMBER ALERT--INITIATION BY OTHER LAW ENFORCEMENT AGENCIES.--

A. The procedures for initiating an AMBER alert pursuant to the AMBER Alert Law are available to all law enforcement agencies in New Mexico; provided that nothing in that law prohibits a local law enforcement agency from developing and implementing its own similar notification plan; provided further that nothing in that act supercedes a provision or procedure in such a local notification plan.

B. If a law enforcement agency that has not developed and implemented its own similar plan desires that an AMBER alert be declared, it shall notify the authorized requester. The authorized requester shall declare an AMBER alert if, after evaluating the information, the authorized requester believes that the criteria for declaring an alert has been satisfied.

C. If an AMBER alert is initiated and there is information that the child's abductor may be traveling or has traveled across state lines, the authorized requester shall notify the other states or the Republic of Mexico in order for those governments to issue an alert. The state police shall work with all bordering states and the Republic of Mexico in order to establish agreements to carry out regional alerts.

Section 5. SUBMISSION OF FALSE INFORMATION--PENALTY.--A person who knowingly submits false information to a law enforcement agency regarding a child abduction is guilty of a petty misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

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

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE JUDICIARY COMMITTEE

SUBSTITUTE FOR HOUSE BILLS 16 AND 161 AND

SENATE BILL 110, WITH EMERGENCY CLAUSE

SIGNED APRIL 1, 2003

CHAPTER 94

CHAPTER 94, LAWS 2003

AN ACT

RELATING TO DOMESTIC VIOLENCE; IMPOSING A FEE UPON OFFENDERS;
CREATING A FUND; MAKING AN APPROPRIATION TO DEFRAY THE COST OF
PROVIDING TREATMENT TO DOMESTIC VIOLENCE OFFENDERS.

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

Section 1. A new section of Chapter 34, Article 6 NMSA 1978 is enacted to read:

"COURT FEES--DEPOSIT IN THE DOMESTIC VIOLENCE OFFENDER
TREATMENT FUND.--

A. In addition to any other fees collected in the district court, metropolitan court and magistrate court, those courts shall assess and collect from a person convicted of a penalty assessment misdemeanor, traffic violation, petty misdemeanor, misdemeanor or felony offense a "domestic violence offender treatment fee" of five dollars (\$5.00).

B. Domestic violence offender treatment fees shall be deposited in the domestic violence offender treatment fund."

Section 2. DOMESTIC VIOLENCE OFFENDER TREATMENT FUND CREATED--APPROPRIATION--PROGRAM REQUIREMENTS.--

A. The "domestic violence offender treatment fund" is created in the state treasury. All fees collected pursuant to the provisions of Section 1 of this act shall be transmitted monthly to the department of finance and administration for credit to the domestic violence offender treatment fund.

B. Balances in the domestic violence offender treatment fund are appropriated to the children, youth and families department to provide funds to domestic violence offender treatment programs to defray the cost of providing treatment to domestic violence offenders. Unexpended or unencumbered balances remaining in the fund at the end of any fiscal year shall not revert to the general fund.

C. Payment out of the domestic violence offender treatment fund shall be made on vouchers issued and signed by the secretary of children, youth and families upon warrants drawn by the department of finance and administration.

D. In order to be eligible for money from the domestic violence offender treatment fund, a domestic violence offender treatment program shall include the following components in its program:

(1) an initial assessment to determine if a domestic violence offender will benefit from participation in the program;

(2) a written contract, which must be signed by the domestic violence offender, that sets forth:

(a) attendance and participation requirements;

(b) consequences for failure to attend or participate in the program; and

(c) a confidentiality clause that prohibits disclosure of information revealed during treatment sessions;

(3) strategies to hold domestic violence offenders accountable for their violent behavior;

(4) a requirement that group discussions are limited to members of the same gender;

(5) an education component that:

(a) defines physical, emotional, sexual, economic and verbal abuse and techniques for stopping those forms of abuse; and

(b) examines gender roles, socialization, the nature of violence, the dynamics of power and control and the effects of domestic violence on children;

(6) a requirement that a domestic violence offender not be under the influence of alcohol or drugs during a treatment session;

(7) a requirement that the program provide monthly written reports to the presiding judge or the domestic violence offender's probation or parole officer regarding:

(a) proof of the domestic violence offender's enrollment in the program;

(b) progress reports that address the domestic violence offender's attendance, fee payments and compliance with other program requirements; and

(c) evaluations of progress made by the domestic violence offender and recommendations as to whether or not to require the offender's further participation in the program; and

(8) a requirement that the term of the program be at least fifty-two weeks.

E. Counseling for couples shall not be a component of a domestic violence offender treatment program.

F. As used in this section, "domestic violence offender" means:

(1) a person convicted for an offense pursuant to the provisions of the Crimes Against Household Members Act; or

(2) a person convicted for violating an order of protection granted by a court pursuant to the provisions of the Family Violence Protection Act.

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE APPROPRIATIONS AND FINANCE

COMMITTEE SUBSTITUTE FOR HOUSE BILL 414

CHAPTER 95

CHAPTER 95, LAWS 2003

AN ACT

RELATING TO TAXATION; AMENDING CERTAIN SECTIONS OF THE PROPERTY TAX CODE CONCERNING THE IMPOSITION OF PROPERTY TAXES ON CERTAIN OMITTED PROPERTY.

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

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 OR LIMITATION ON INCREASE IN VALUE 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 or for a limitation on increase in value 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;

(b) thirty days after the mailing of a property tax bill on omitted property pursuant to Section 7-38-76 NMSA 1978; or

(c) 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 or of a limitation on increase in value 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 county assessor may provide for an informal conference on the protest before the hearing."

Section 2. Section 7-38-42 NMSA 1978 (being Laws 1979, Chapter 343, Section 1) is amended to read:

"7-38-42. COLLECTION AND RECEIPT OF AND ACCOUNTING FOR PROPERTY TAXES--APPLICATION OF RECEIPTS TO DELINQUENT TAXES.--

A. The county treasurer has the responsibility and authority for collection of taxes and any penalties or interest due under the Property Tax Code except for the collection of delinquent taxes, penalties and interest authorized to be collected by the department under

Section 7-38-62 NMSA 1978.

B. Property taxes, penalties and interest collected shall be receipted and accounted for in accordance with law and regulations of the department of finance and administration.

C. Any payments received by the treasurer or the department as payments for property taxes, penalties or interest shall be first applied to the oldest

outstanding unpaid property taxes, penalties or interest accrued in prior property tax years on the property identified and described in the property tax bill for which payment is tendered or, if the payment cannot be identified with a particular year's property tax bill, then the payment shall be applied first to the oldest liability for property taxes, penalties and interest shown in the treasurer's records under the name of the paying taxpayer. In applying the foregoing requirements for applications of payments and in the adoption of any regulations to implement those provisions, the following additional rules shall apply:

(1) applications of payments to a prior year's delinquent taxes, penalties and interest shall not be made for more than ten years prior to the year of payment unless the treasurer's records show that the property for which taxes are delinquent has been deeded to the state of New Mexico and that property has not been sold by the state pursuant to applicable law;

(2) applications of payments to a prior year's delinquent taxes, penalties and interest shall not be made if:

(a) the prior year for which the delinquent taxes, penalties or interest are due is not the immediately preceding tax year;

(b) the delinquent taxes, penalties or interest are the result of real estate improvements that were omitted from property tax schedules in the prior year and listed and billed pursuant to Section 7-38-76 NMSA 1978;

(c) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted; and

(d) the payments were made by or on behalf of the current owner;

(3) after application of payment received, if all or part of the payment has been applied to a prior year's delinquent taxes, penalties or interest, the receiving authority shall issue a receipt to the paying taxpayer showing the application of the payment and indicating any balance due for taxes, penalties or interest to bring the property tax payment status current; and

(4) the failure of a receiving authority to apply a payment as required under this subsection or the failure to issue a required receipt to the taxpayer of the status of his account shall not relieve the taxpayer of liability for taxes, penalties or interest he would otherwise be required to pay nor does action or inaction by the receiving authority act to estop the collecting authority from taking any action to collect or enforce the payment of taxes, penalties and interest legally due."

Section 3. Section 7-38-48 NMSA 1978 (being Laws 1973, Chapter 258, Section 88, as amended) is amended to read:

"7-38-48. PROPERTY TAXES ARE A LIEN AGAINST REAL PROPERTY FROM JANUARY 1--PRIORITIES--CONTINUANCE OF TAXING PROCESS.--

A. Except as provided in Subsection B of this section, taxes on real property are a lien against the real property from January 1 of the tax year for which the taxes are imposed. The lien runs in favor of the state and secures the payment of taxes on the real property and any penalty and interest that become due. The lien continues until the taxes and any penalty and interest are paid. The lien created by this section is a first lien and paramount to any other interest in the property, perfected or unperfected. The annual taxing process provided for in the Property Tax Code shall continue as to any particular property regardless of prior tax delinquencies or of pending protests, actions for refunds or other tax controversies involving the property, including a sale for delinquent taxes.

B. No lien is created pursuant to Subsection A of this section if:

(1) the tax otherwise creating the lien is not due for the current tax year or the immediately preceding property tax year;

(2) the tax otherwise creating the lien is the result of real estate improvements that were omitted from property tax schedules in a prior year and listed and billed pursuant to Section 7-38-76 NMSA 1978; and

(3) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted."

Section 4. Section 7-38-65 NMSA 1978 (being Laws 1973, Chapter 258, Section 105, as amended by Laws 2001,

Chapter 253, Section 1 and by Laws 2001, Chapter 254, Section 1) is amended to read:

"7-38-65. COLLECTION OF DELINQUENT TAXES ON REAL PROPERTY-- SALE OF REAL PROPERTY.--

A. If a lien exists by the operation of

Section 7-38-48 NMSA 1978, the department may collect delinquent taxes on real property by selling the real property on which the taxes have become delinquent. The sale of real property for delinquent taxes shall be in accordance with the provisions of the Property Tax Code. Real property may be sold for delinquent taxes at any time after the expiration of three years from the first date shown on the tax delinquency list on

which the taxes became delinquent. Real property shall be offered for sale for delinquent taxes either within four years after the first date shown on the tax delinquency list on which the taxes became delinquent or, if the department is barred by operation of law or by order of a court of competent jurisdiction from offering the property for sale for delinquent taxes within four years after the first date shown on the tax delinquency list on which the taxes became delinquent, within one year from the time the department determines that it is no longer barred from selling the property, unless:

(1) all delinquent taxes, penalties, interest and costs due are paid by 5:00 p.m. of the day prior to the date of the sale; or

(2) an installment agreement for payment of all delinquent taxes, penalties, interests and costs due is entered into with the department by 5:00 p.m. of the day prior to the date of the sale pursuant to Section 7-38-68 NMSA 1978.

B. Failure to offer property for sale within the time prescribed by Subsection A of this section shall not impair the validity or effect of any sale which does take place.

C. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978."

Section 5. Section 7-38-76 NMSA 1978 (being Laws 1973, Chapter 258, Section 116, as amended) is amended to read:

"7-38-76. PROPERTY SUBJECT TO PROPERTY TAXATION BUT OMITTED FROM PROPERTY TAX SCHEDULES IN PRIOR YEARS.--

A. Subject to the limitations contained in the Property Tax Code and except as provided in Subsection B of this section, county assessors, treasurers and the department have the authority and the duty to enter in the valuation records, list on the property tax schedules, bill for and collect the taxes for all tax years on property that was subject to property taxation but was omitted from property tax schedules and for which taxes have not been paid but would be due except for the omission. Property tax bills shall be prepared and mailed by the county treasurers within thirty days of the date the omitted property is listed on the property tax schedule, and all taxes on omitted property shall be due the date the property tax bill is mailed.

B. Except for taxes due in the current tax year and the immediately preceding tax year, the current owner of the real estate is not liable for a property tax bill mailed pursuant to Subsection A of this section if:

(1) the omitted property is improvements that were placed on the real estate; and

(2) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted.

C. Nothing in this section relieves the owner of the property at the time the improvements were omitted from being personally liable for the taxes due pursuant to Section 7-38-47 NMSA 1978.

D. The department shall promulgate regulations for the procedures to be followed and the records to be maintained in the administration and collection of taxes on omitted property. The department of finance and administration shall promulgate regulations covering the receipt of, accounting for and distribution of taxes on omitted property."

SENATE BILL 631, AS AMENDED

CHAPTER 96

CHAPTER 96, LAWS 2003

AN ACT

RELATING TO INSURANCE; AMENDING THE HEALTH MAINTENANCE ORGANIZATION LAW TO PROHIBIT CERTAIN TYPES OF DISCRIMINATION AGAINST DOCTORS OF ORIENTAL MEDICINE.

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

Section 1. Section 59A-46-36 NMSA 1978 (being Laws 1989, Chapter 96, Section 2, as amended) is amended to read:

"59A-46-36. DOCTOR OF ORIENTAL MEDICINE--DISCRIMINATION PROHIBITED.--Doctors of oriental medicine as a class of licensed providers willing to meet the terms and conditions offered by a health maintenance organization shall not be excluded from a health maintenance organization and shall not be discriminated against relative to other classes of licensed providers regarding services provided within their scope of practice that are in compliance with nationally recognized coding systems. Health maintenance organizations may determine the specific procedure codes that a doctor of oriental medicine is contracted to provide. Health maintenance organizations may choose to contract a doctor of oriental medicine as a primary care provider."

SENATE BILL 371, AS AMENDED

CHAPTER 97

CHAPTER 97, LAWS 2003

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; CREATING THE FILM ADVISORY BOARD; CREATING AN EXECUTIVE BOARD; DECLARING AN EMERGENCY.

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

Section 1. A new section of the Economic Development Department Act is enacted to read:

"FILM ADVISORY BOARD--CREATED--MEMBERSHIP--EXECUTIVE BOARD.--

A. The "film advisory board" is created to advise the department and the governor on ways to promote film production in New Mexico, assist in the design and implementation of the department's strategic plan for building a media infrastructure in the state, assist in designing a workforce training program for film production and make recommendations for incentives and funding for these efforts.

B. The film advisory board shall be composed of

no more than thirty members appointed by the governor for four-year staggered terms; provided that the initial appointments shall be made so that one-half of the members shall be appointed for two-year terms and one-half of the members shall be appointed for four-year terms. Terms shall expire on January 1.

C. From the membership of the film advisory board, the governor shall appoint a seven-member "executive board". At least five members of the executive board shall have experience in some aspect of film production. The executive board shall:

(1) with the approval of the secretary, create subcommittees of the film advisory board and name the chairmen of those subcommittees;

(2) coordinate activities of the subcommittees and the film advisory board; and

(3) develop recommendations pertaining to the charges of the film advisory board for the consideration of the film advisory board.

D. The governor shall name the chairman of the film advisory board, who shall serve as the chairman of the executive board. The film advisory board may elect such other officers as it deems necessary. The film advisory board shall meet at the call of the chairman, at least quarterly. Members of the film advisory board may receive per diem and mileage for travel within New Mexico as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

E. Staff for the film advisory board shall be provided by the department.

F. The film advisory board shall report to the department, the governor and the legislature by December 1 of each year on its activities and recommendations."

Section 2. EMERGENCY.--It is necessary for the public

peace, health and safety that this act take effect immediately.

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 320, AS AMENDED,

WITH EMERGENCY CLAUSE

SIGNED APRIL 2, 2003

CHAPTER 98

CHAPTER 98, LAWS 2003

AN ACT

RELATING TO COUNTY REVENUE BONDS; AUTHORIZING THE ISSUANCE OF PAYMENT IN LIEU OF TAXES REVENUE BONDS TO BE ISSUED BY COUNTIES FOR THE REPAYMENT OF EXISTING LOANS TO COUNTIES FROM THE NEW MEXICO FINANCE AUTHORITY; PLEDGING PAYMENT IN LIEU OF TAXES REVENUE TO PAY BONDS.

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

Section 1. Section 4-62-1 NMSA 1978 (being Laws 1992, Chapter 95, Section 1, as amended by Laws 2001, Chapter 172, Section 3 and also by Laws 2001, Chapter 328, Section 2) is amended to read:

"4-62-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to Chapter 4, Article 62 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 4, Article 62 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections B through M of this section.

B. Gross receipts tax revenue bonds may be issued for 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 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, water utilities or other water, wastewater or related facilities, 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;

(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; or

(10) acquiring, constructing, extending, bettering, repairing or otherwise improving public transit systems or any regional transit systems or facilities.

A county may pledge irrevocably any or all of the revenue from the first one-eighth of one percent increment and the third one-eighth of one percent increment of the county gross receipts tax and any increment of the county infrastructure gross receipts tax and county capital outlay 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 revenue from the first one-eighth of one percent increment or the third one-eighth of one percent increment of the county gross receipts tax or any increment of the county infrastructure gross receipts tax or county capital outlay 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 or any increment of the county infrastructure gross receipts tax or county capital outlay 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, 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.

Revenues in excess of the annual principal and interest due on gross receipts tax revenue bonds secured by a pledge of gross receipts tax revenue may be accumulated in a debt service reserve account. The governing body of the county may appoint a commercial bank trust department to act as trustee of the proceeds of the tax and to administer the payment of principal of and interest on the bonds.

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 shall 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 the revenues received from 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 is reasonably related to and constitutes 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 the Fire Protection Fund Law 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 the 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 prevents the pledge to such bonds of revenues received from existing, future or 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 is reasonably related to and constitutes a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing the fire district revenue 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 the Law Enforcement Protection Fund Act 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 acquiring, equipping, remodeling or improving a county hospital or county health 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 acquiring, equipping, remodeling or improving a county hospital or county health facility.

K. Economic development gross receipts tax revenue bonds may be issued for the purpose of furthering economic development projects as defined in the Local Economic Development Act. A county may pledge irrevocably any or all of the

county infrastructure gross receipts tax to the payment of the interest on and principal of the economic development gross receipts tax revenue bonds for the purpose authorized in this subsection.

L. County education gross receipts tax revenue bonds may be issued for public school or off-campus instruction program capital projects as authorized in Section 7-20E-20 NMSA 1978. A county may pledge irrevocably any or all of the county education gross receipts tax revenue to the payment of interest on and principal of the county education gross receipts tax revenue bonds for the purpose authorized in this section.

M. PILT revenue bonds may be issued by a county to repay all or part of the principal and interest of an outstanding loan owed by the county to the New Mexico finance authority. A county may pledge irrevocably all or part of PILT revenue to the payment of principal of and interest on new loans or preexisting loans provided by the New Mexico finance authority to finance a public project as "public project" is defined in Subsection E of Section 6-21-3 NMSA 1978.

N. 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.

O. 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 a utility unless the utility is regulated by the public regulation 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 a water, wastewater, sewer, gas or electric utility or joint utility serving the public. H class counties shall obtain public regulation commission approvals required by Section 3-23-3 NMSA 1978.

P. 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, a county infrastructure gross receipts tax, the county education gross receipts tax, a county capital outlay gross receipts 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 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.

Q. As used in this section:

(1) "county infrastructure gross receipts tax revenue" means the revenue from the county infrastructure gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(2) "county capital outlay gross receipts tax revenue" means the revenue from the county capital outlay gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(3) "county education gross receipts tax revenue" means the revenue from the county education gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(4) "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;

(5) "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;

(6) "county gross receipts tax revenue" means the revenue attributable to the first one-eighth of one percent and the third one-eighth of one percent increments 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;

(7) "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;

(8) "PILT revenue" means revenue received by the county from the federal government as payments in lieu of taxes; and

(9) "public building" includes but is not limited to fire stations, police buildings, county or regional jails, county or regional juvenile detention facilities, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices, courthouses and garages for housing, repairing and maintaining county vehicles and equipment.

R. 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. EFFECTIVE DATE.--The effective date of

the provisions of this act is July 1, 2003.

SENATE BILL 44, AS AMENDED

CHAPTER 99

CHAPTER 99, LAWS 2003

AN ACT

RELATING TO THE ENVIRONMENT; CREATING A TECHNICAL ADVISORY COMMITTEE FOR WASTEWATER TREATMENT AND DISPOSAL.

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

Section 1. TECHNICAL ADVISORY COMMITTEE CREATED--DUTIES AND POWERS OF THE COMMITTEE.--

A. The "wastewater technical advisory committee" is created. The committee shall consist of five members to be appointed by and to serve at the pleasure of the secretary of environment. The members shall include:

(1) a wastewater treatment system engineer with at least ten years of experience in wastewater system design and construction;

(2) a faculty member from a university or college located within New Mexico with a minimum of a master's degree in biological science, microbiology, soil science or engineering, and with a minimum of ten years of work or academic experience with wastewater treatment or wastewater treatment facility management;

(3) a representative from the New Mexico state university water utilities technical assistance program;

(4) a class IV certified wastewater operator with at least ten years of experience; and

(5) a representative from the New Mexico home builders association.

B. The term of appointed members shall be three years. Members shall serve until their successors are appointed. Vacancies occurring in the membership of an appointed member shall be filled by the secretary for the remainder of the unexpired term.

C. The committee shall conduct open meetings as needed, but not less than quarterly.

D. The department of environment shall provide technical and legal assistance to the committee as needed.

E. The committee shall:

(1) establish procedures, practices and policies governing the committee's activities;

(2) provide standardized objective evaluation of wastewater treatment and disposal technologies for both large- and small-flow domestic, commercial and agricultural wastewater systems and submit its findings to the secretary for final approval by the secretary, who shall add the wastewater treatment and disposal technologies to the list of approved technologies maintained by the department, including the ground water quality bureau and the liquid waste program of the field operations division of the department of environment and their constituent agencies; and

(3) maintain a current list of approved wastewater technologies accessible by the public on the department's internet site.

F. Members of the committee shall receive reimbursement for expenses incurred in the performance of their duties pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. Expenditures for this purpose shall be made from the budgeted funds of the department.

SENATE BILL 738, AS AMENDED

CHAPTER 100

CHAPTER 100, LAWS 2003

AN ACT

RELATING TO ALCOHOL; REVISING THE DEFINITION OF "SUPPLIER" FOR THE PURPOSE OF FRANCHISE AGREEMENTS PURSUANT TO THE LIQUOR CONTROL ACT.

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

Section 1. Section 60-8A-7 NMSA 1978 (being Laws 1981, Chapter 39, Section 54, as amended) is amended to read:

"60-8A-7. FRANCHISES--DEFINITIONS.--As used in Sections 60-8A-7 through 60-8A-11 NMSA 1978:

A. "franchise" means a contract or agreement, either expressed or implied, whether written or oral, between a supplier and wholesaler, wherein:

(1) a commercial relationship of definite duration or continuing indefinite duration is involved; and

(2) the wholesaler is granted the right to buy and to offer, sell and distribute within this state or any designated area thereof such of the supplier's brand of packaged alcoholic beverages as may be agreed upon;

B. "good cause":

(1) includes failure by the wholesaler to substantially comply with the essential and reasonable provisions of a contract, agreement or understanding with a supplier;

(2) includes use of bad faith on the part of the wholesaler in carrying out the terms of the franchise; and

(3) does not include failure or refusal on the part of the wholesaler to engage in any trade practice, conduct or activity that may result in a violation of any federal law or regulation or any law or regulation of this state;

C. "supplier" means a person, partnership, corporation or other form of business enterprise engaged in business as a manufacturer, importer, broker, agent or its successors or assigns that distributes any or all of its brands of alcoholic beverages through licensed wholesalers in this state. "Supplier" does not include successors or assigns for spirituous liquors or wines;

D. "termination" includes any substantial alteration or modification of the provisions of the franchise; and

E. "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing in the trade as evidenced by all surrounding circumstances."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 688, AS AMENDED

CHAPTER 101

CHAPTER 101, LAWS 2003

AN ACT

RELATING TO THE TREATY OF GUADALUPE HIDALGO; ESTABLISHING A DIVISION WITHIN THE OFFICE OF THE ATTORNEY GENERAL TO ADDRESS CONCERNS RELATING TO THE PROVISIONS OF THE TREATY OF GUADALUPE HIDALGO.

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

Section 1. A new section of Chapter 8, Article 5 NMSA 1978 is enacted to read:

"GUADALUPE HIDALGO TREATY DIVISION.--

A. The "Guadalupe Hidalgo treaty division" is created within the office of the attorney general. The division shall review, oversee and address concerns relating to the provisions of the Treaty of Guadalupe Hidalgo that have not been implemented or observed in the spirit of Article 2, Section 5 of the constitution of New Mexico and Section 47-1-25 NMSA 1978.

B. The division shall consist of such personnel and have such duties as the attorney general shall designate.

C. The attorney general shall report the findings and recommendations of the division to the second session of the forty-sixth legislature."

SENATE BILL 541, AS AMENDED

CHAPTER 102

CHAPTER 102, LAWS 2003

AN ACT

MAKING AN APPROPRIATION FROM THE STATE LANDS MAINTENANCE FUND FOR THE PURPOSE OF EXTENDING UNIVERSITY BOULEVARD TO MESA DEL SOL.

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

Section 1. APPROPRIATION--UNIVERSITY BOULEVARD.--Eight hundred thousand dollars (\$800,000) is appropriated from the state lands maintenance fund to the local government division of the department of finance and administration for expenditure in fiscal years 2004 and 2005 for the purpose of extending University boulevard to Mesa del Sol in Bernalillo county. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the state lands maintenance fund.

SENATE BILL 838

CHAPTER 103

CHAPTER 103, LAWS 2003

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; CHANGING THE WAY AN ELECTION MAY BE INITIATED IN A LOCAL OPTION DISTRICT ON WHETHER TO ISSUE RESTAURANT LICENSES FOR THE SALE OF BEER AND WINE.

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

Section 1. Section 60-6A-4 NMSA 1978 (being Laws 1981, Chapter 39, Section 21) is amended to read:

"60-6A-4. RESTAURANT LICENSE.--

A. At any time after the effective date of the Liquor Control Act, a local option district may approve the issuance of restaurant licenses for the sale of beer and wine by holding an election on that question pursuant to the procedures set out in Section 60-5A-1 NMSA 1978. The election also may be initiated by a resolution adopted by the governing body of the local option district without a petition from registered qualified electors having been submitted.

B. After the approval of restaurant licenses by the registered qualified electors of the local option district and upon completion of all requirements in the Liquor Control Act for the issuance of licenses, a restaurant located or to be located within the local option district may receive a restaurant license to sell, serve or allow the consumption of beer and wine subject to the following requirements and restrictions:

(1) the applicant shall submit evidence to the department that he has a current valid food service establishment permit;

(2) the applicant shall satisfy the director that the primary source of revenue from the operation of the restaurant will be derived from meals and not from the sale of beer and wine;

(3) the director shall condition renewal upon a requirement that no less than sixty percent of gross receipts from the preceding twelve months' operation of the licensed restaurant was derived from the sale of meals;

(4) upon application for renewal, the licensee shall submit an annual report to the director indicating the annual gross receipts from the sale of meals and from beer and wine sales;

(5) restaurant licensees shall not sell beer and wine for consumption off the licensed premises;

(6) all sales, services and consumption of beer and wine authorized by a restaurant license shall cease at the time meals sales and services cease or at 11:00 p.m., whichever time is earlier;

(7) if Sunday sales have been approved in the local option district, a restaurant licensee may serve beer and wine on Sundays until the time meals sales and services cease or 11:00 p.m., whichever time is earlier; and

(8) a restaurant license shall not be transferable from person to person or from one location to another.

C. The provisions of Section 60-6A-18 NMSA 1978 shall not apply to restaurant licenses.

D. Nothing in this section shall prevent a restaurant licensee from receiving other licenses pursuant to the Liquor Control Act."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 57

CHAPTER 104

CHAPTER 104, LAWS 2003

AN ACT

RELATING TO EDUCATION; ALLOWING FOR THE WAIVER OF CERTAIN REQUIREMENTS FOR SCHOOLS THAT EXCEED EDUCATIONAL STANDARDS.

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

Section 1. A new section of the Public School Code is enacted to read:

"ADDITIONAL STATE BOARD DUTIES--WAIVER OF CERTAIN REQUIREMENTS.--

A. The state board shall approve all reasonable requests to waive the following for all public schools that exceed educational standards as determined by the state board:

(1) accreditation review requirements as provided in Section 22-2-2 NMSA 1978;

(2) the length of the school day requirement as provided in Section 22-2-8.1 NMSA 1978;

(3) the individual class load requirement as provided in Section 22-2-8.2 NMSA 1978;

(4) the subject area requirement as provided in Section 22-2-8.3 NMSA 1978; and

(5) purchase of instructional material from the state board-approved multiple list requirement as provided in Section 22-15-8 NMSA 1978.

B. Upon receiving a waiver request from a school that exceeds educational standards and in addition to the requirements set forth in Subsection A of this section, the state board may waive:

(1) the graduation requirement as provided in Section 22-2-8.4 NMSA 1978;

(2) evaluation standards for school personnel; and

(3) other requirements of the Public School Code that impede innovation in education if the waiver request is supported by the teachers at the requesting school and the requesting school's local school board.

C. Waivers granted pursuant to this section shall begin in the school year following that in which a public school exceeds educational standards and may remain in effect as long as the school continues to exceed educational standards.

D. The state board shall only waive requirements that do not conflict with the federal No Child Left Behind Act of 2001 or rules adopted pursuant to that act."

SENATE BILL 80, AS AMENDED

CHAPTER 105

CHAPTER 105, LAWS 2003

AN ACT

MAKING AN APPROPRIATION FOR DRINKING WATER SYSTEM FINANCING;
DECLARING AN EMERGENCY.

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

Section 1. APPROPRIATION.--One million six hundred ten thousand five hundred dollars (\$1,610,500) is appropriated from the public project revolving fund to the drinking water state revolving loan fund for expenditure in fiscal year

2003 and subsequent fiscal years to carry out the purposes of the Drinking Water State Revolving Loan Fund Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public project revolving fund.

Section 2. EMERGENCY.--It is necessary for the public

peace, health and safety that this act take effect
immediately.

SENATE BILL 109, WITH EMERGENCY

CLAUSE SIGNED APRIL 2, 2003

CHAPTER 106

CHAPTER 106, LAWS 2003

AN ACT

RELATING TO TRANSPORTATION; AUTHORIZING A NEW MEXICO RAIL
PASSENGER STUDY.

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

Section 1. RAIL PASSENGER STUDY.--

A. The alliance for transportation research institute at the university of New Mexico shall conduct a feasibility study regarding the potential for passenger rail service linking the El Paso-Juarez metropolitan area with New Mexico towns and cities along the Rio Grande corridor and continuing on to Denver, Colorado. The study shall:

- (1) identify the alignment, condition and ownership of tracks;
- (2) define an integrated network for intercity rail travel; and
- (3) provide alternatives for intermodal connections between the affected airports and passenger rail services.

B. The study shall investigate the potential for New Mexico passenger rail service links to the national intermodal transportation initiative, "Reconnecting America".

C. The study shall be conducted in collaboration with the state highway and transportation department.

D. The alliance for transportation research institute shall report to the governor and the legislature on study recommendations for potential intermodal links to regional and national transportation strategies and interstate rail travel.

SENATE BILL 640, AS AMENDED

CHAPTER 107

CHAPTER 107, LAWS 2003

AN ACT

RELATING TO STATE PARKS; PROVIDING STATE PARK LAW ENFORCEMENT OFFICERS WITH AUTHORITY TO PROVIDE ASSISTANCE TO FULL-TIME PEACE OFFICERS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 16-2-30 NMSA 1978 (being Laws 1935, Chapter 57, Section 17, as amended) is amended to read:

"16-2-30. POLICE POWERS VESTED IN DIRECTOR AND STATE PARKS EMPLOYEES DESIGNATED BY THE SECRETARY.--

A. The director of the state parks division and state parks division employees designated by the secretary are vested with general police power and shall be state park law enforcement officers with the authority of conservators of the peace within state parks and recreation areas. It shall be their duty to enforce the laws of the state and the rules and regulations of the energy, minerals and natural resources department within state parks and recreation areas. They shall have the further power of forcibly ejecting from a state park or recreation area a person who knowingly, willfully or wantonly violates a rule or regulation of the department within a state park or recreation area.

B. State park law enforcement officers, in emergency situations, shall be considered on duty and within the scope of their employment for employee benefits when they follow specific instructions from a duly qualified full-time peace officer and aid the peace officer in carrying out his duties. State park law enforcement officers shall respond in emergency situations, subject to the needs of the park to which they are assigned, and they shall have law enforcement powers outside the park so long as they follow specific instructions from the peace officer who requested aid.

C. As used in this section, "emergency" means a sudden, unexpected occurrence or an unforeseen combination of circumstances that calls for immediate action without time for deliberation."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE CONSERVATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 105,

AS AMENDED

CHAPTER 108

CHAPTER 108, LAWS 2003

AN ACT

RELATING TO CHILDREN; AMENDING A PROVISION OF THE CHILDREN'S CODE TO CLARIFY TERMINATION OF PARENTAL RIGHTS.

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

Section 1. Section 32A-4-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 123, as amended) 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, the foster parent, preadoptive parent or relative providing care for the child 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, notice shall also be sent by certified mail to the tribes of 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-4-17 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. When a motion to terminate parental rights is filed, the department shall perform concurrent planning.

K. When a child has been in foster care for not less than fifteen of the previous twenty-two months, the department shall file a motion to terminate parental rights, unless:

(1) a parent has made substantial progress toward eliminating the problem that caused the child's placement in foster care; it is likely that the child will be able to safely return to the parent's home within three months; and the child's return to the parent's home will be in the child's best interests;

(2) the child has a close and positive relationship with a parent and a permanent plan that does not include termination of parental rights will provide the most secure and appropriate placement for the child;

(3) the child is thirteen years of age or older, is firmly opposed to termination of parental rights and is likely to disrupt an attempt to place him with an adoptive family;

(4) a parent is terminally ill, but in remission, and does not want his parental rights to be terminated; provided that the parent has designated a guardian for his child;

(5) the child is not capable of functioning if placed in a family setting. In such a case, the court shall reevaluate the status of the child every ninety days unless there is a final court determination that the child cannot be placed in a family setting;

(6) grounds do not exist for termination of parental rights;

(7) the child is an unaccompanied, refugee minor and the situation regarding the child involves international legal issues or compelling foreign policy issues; or

(8) adoption is not an appropriate plan for the child.

L. For purposes of this section, a child shall be considered to have entered foster care on the earlier of:

(1) the date of the first judicial finding that the child has been abused or neglected; or

(2) the date that is sixty days after the date on which the child was removed from the home.

M. 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).

N. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

O. 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.

P. 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."

SENATE FLOOR SUBSTITUTE FOR

SENATE BILL 624

CHAPTER 109

CHAPTER 109, LAWS 2003

AN ACT

RELATING TO LONG-TERM CARE; AMENDING SECTIONS OF THE LONG-TERM CARE OMBUDSMAN ACT PERTAINING TO ACCESS TO RECORDS.

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

Section 1. Section 28-17-13 NMSA 1978 (being Laws 1989, Chapter 208, Section 13, as amended) 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, including conducting investigations, under the Long-Term Care Ombudsman Act, the office shall have full and immediate access to readily available medical, personal, financial and other nonmedical records, which include administrative records, policies, procedures or documents that concern, involve or pertain to a resident's diet, comfort, health, safety or welfare, but do not include internal quality assurance and risk management reports, of a patient, resident or client of a long-term care facility that are retained by the facility or the facility's parent corporation or owner. If the records are not readily available, they are to be provided to the office within twenty-four hours of the request. 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;

(c) access to the records is necessary to investigate or evaluate a complaint; or

(d) 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. In order to carry out its responsibilities as a health oversight agency, the office shall establish procedures to protect the confidentiality of records obtained

pursuant to this section and in accordance with the federal Health Insurance Portability and Accountability Act of 1996 regulations."

Section 2. Section 28-17-14 NMSA 1978 (being Laws 1989, Chapter 208, Section 14, as amended) 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 pursuant to Subsection C of Section 28-17-4 NMSA 1978 at the discretion of the state ombudsman or the state ombudsman's designee. All state ombudsman files and records pertaining to clients, patients and residents are confidential and not subject to the provisions of the Inspection of Public Records Act. The state ombudsman shall not disclose the identity of any complainant, resident, client or patient about whom the office maintains files or records unless:

(1) the complainant, resident, client or patient or the legal representative of that person consents in writing to the disclosure;

(2) the complainant, resident, client or patient 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 program where the identity of any complainant, witness, patient, resident or client is not disclosed."

SENATE BILL 663, AS AMENDED

CHAPTER 110

CHAPTER 110, LAWS 2003

AN ACT

RELATING TO THE CAPITOL BUILDINGS PLANNING COMMISSION; PROVIDING FOR TWO ADDITIONAL MEMBERS.

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

Section 1. Section 15-10-1 NMSA 1978 (being Laws 1997, Chapter 178, Section 5, as amended) is amended to read:

"15-10-1. 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 and Albuquerque. The commission shall review prior long-range facilities needs assessments and develop an initial master plan for the state facilities in Santa Fe and Albuquerque.

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 highway and transportation or his designee, the state cultural affairs officer or his designee, 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 commission 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 regularly and shall report annually to the legislature on an annual update of the master plan for the long-range facilities needs of state government in Santa Fe and Albuquerque."

SENATE BILL 689, AS AMENDED

CHAPTER 111

CHAPTER 111, LAWS 2003

AN ACT

RELATING TO THE STATE DEFENSE FORCE; EXTENDING WORKERS' COMPENSATION BENEFITS TO MEMBERS OF THE STATE DEFENSE FORCE.

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

Section 1. A new section of Chapter 20, Article 5 NMSA 1978 is enacted to read:

"STATE DEFENSE FORCE--WORKERS' COMPENSATION.--

A. When a member of the state defense force is on state-ordered militia duty, he is a worker under the Workers' Compensation Act and the department of military affairs is his employer.

B. The average weekly wage of a member of the state defense force shall be computed at the pay earned in his civilian capacity. Disability benefits to a member of the state defense force shall be limited to medical benefits and two-thirds of his civilian pay if he is unable to work.

C. A member of the state defense force shall not be considered a worker under the Workers' Compensation Act when performing cadre duty.

D. As used in this section:

(1) "cadre duty" means the normal service and training of the standing cadre of the state defense force in anticipation and support of militia duty, including organization, administration and other pre-call matters; and

(2) "militia duty" means the performance of actual military service for the state in time of need when called by the governor or adjutant general following mobilization of the national guard. If performed by the unorganized militia following its call by the governor pursuant to Section 20-2-6 NMSA 1978, it shall include the post-call training of the New Mexico state defense force as

required by that call."

SENATE BILL 739, AS AMENDED

CHAPTER 112

CHAPTER 112, LAWS 2003

AN ACT

RELATING TO GAMING; EXPANDING THE PARTIES WITH WHOM THE NEW MEXICO LOTTERY AUTHORITY MAY CONTRACT TO OFFER JOINT LOTTERY GAMES; AMENDING THE NEW MEXICO LOTTERY ACT; DECLARING AN EMERGENCY.

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

Section 1. Section 6-24-6 NMSA 1978 (being Laws 1995, Chapter 155, Section 6) is amended to read:

"6-24-6. POWERS OF THE AUTHORITY.--

A. The authority shall have all powers necessary or convenient to carry out and effectuate the purposes and provisions of the New Mexico Lottery Act that are not in conflict with the constitution of New Mexico and that are generally exercised by corporations engaged in entrepreneurial pursuits, including the power to:

- (1) sue and be sued;
- (2) adopt and alter a seal;
- (3) adopt, amend and repeal bylaws, rules, policies and procedures for the conduct of its affairs and its business;
- (4) procure or provide insurance;
- (5) hold copyrights, trademarks and service marks and enforce its rights with respect thereto;
- (6) initiate, supervise and administer the operation of the lottery in accordance with the provisions of the New Mexico Lottery Act and rules, policies and procedures adopted pursuant to that act;
- (7) enter into written agreements or contracts for the operation, participation in or marketing or promotion of a joint lottery or joint lottery games with operators of a lottery:
 - (a) in one or more other states;
 - (b) in a territory of the United States;
 - (c) in one or more political subdivisions of another state or territory of the United States;
 - (d) in a sovereign nation;
 - (e) in an Indian nation, tribe or pueblo located within the United States; or
 - (f) legally operated outside of the United States;
- (8) acquire or lease real property and make improvements thereon and acquire by lease or by purchase personal property, including computers,

mechanical, electronic and on-line equipment and terminals and intangible property, including computer programs, systems and software;

(9) enter into contracts to incur debt and borrow money in its own name and enter into financing agreements with the state, with agencies or instrumentalities of the state or with any commercial bank or credit provider;

(10) receive and expend, in accordance with the provisions of the New Mexico Lottery Act, all money received from any lottery or nonlottery source for effectuating the purposes of the New Mexico Lottery Act;

(11) administer oaths, take depositions, issue subpoenas and compel the attendance of witnesses and the production of books, papers, documents and other evidence relative to any investigation or proceeding conducted by the authority;

(12) appoint and prescribe the duties of officers, agents and employees of the authority, including professional and administrative staff and personnel, and to fix their compensation, pay their expenses and provide a benefit program, including a retirement plan and a group insurance plan;

(13) select and contract with lottery vendors and lottery retailers;

(14) enter into contracts or agreements with state, local or federal law enforcement agencies or private investigators or other persons for the performance of law enforcement, background investigations and security checks;

(15) enter into contracts of all types on such terms and conditions as the authority may determine;

(16) establish and maintain banking relationships, including establishment of checking and savings accounts and lines of credit;

(17) advertise and promote the lottery and lottery games;

(18) act as a lottery retailer, conduct promotions that involve the dispensing of lottery tickets and establish and operate a sales facility to sell lottery tickets and any related merchandise; and

(19) adopt, repeal and amend such rules, policies and procedures as necessary to carry out and implement its powers and duties, organize and operate the authority, conduct lottery games and any other matters necessary or desirable for the efficient and effective operation of the lottery and the convenience of the public.

B. The powers enumerated in this section are cumulative of and in addition to those powers enumerated elsewhere in the New Mexico Lottery Act, and no such powers limit or restrict any other powers of the authority."

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

HOUSE BILL 32, WITH EMERGENCY CLAUSE

SIGNED APRIL 2, 2002

CHAPTER 113

CHAPTER 113, LAWS 2003

AN ACT

RELATING TO VETERANS; AUTHORIZING THE ISSUANCE OF HIGH SCHOOL DIPLOMAS FOR CERTAIN WORLD WAR II VETERANS.

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

Section 1. A new section of the Public School Code is enacted to read:

"HIGH SCHOOL DIPLOMAS--WORLD WAR II VETERANS.--

A. Notwithstanding any other provision of the Public School Code, a local school board may issue a high school diploma to a World War II veteran who:

(1) is an honorably discharged member of the armed forces of the United States;

(2) was scheduled to graduate from high school after 1940 and before 1951;

(3) was a resident of New Mexico and attended a high school in the locality of the current school district; and

(4) left high school before graduation to serve in World War II.

B. A local school board may issue a high school diploma to a qualifying World War II veteran regardless of whether the veteran holds a high school equivalency diploma or is deceased.

C. The state board shall adopt and promulgate rules to carry out the provisions of this section, including:

(1) an application form to be submitted by the World War II veteran or a person acting on behalf of the veteran if the veteran is incapacitated or deceased; and

(2) what constitutes acceptable evidence of eligibility for a diploma."

HOUSE BILL 125

CHAPTER 114

CHAPTER 114, LAWS 2003

AN ACT

RELATING TO TOBACCO; ENACTING THE TOBACCO ESCROW FUND ACT; PROVIDING FOR A DIRECTORY TO BE MAINTAINED BY THE ATTORNEY GENERAL; IMPOSING REPORTING AND CERTIFICATION REQUIREMENTS; PROHIBITING CONDUCT RELATING TO CIGARETTES AND CERTAIN OTHER TOBACCO PRODUCTS; PROVIDING CIVIL AND CRIMINAL PENALTIES; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE.--This act may be cited as the "Tobacco Escrow Fund Act".

Section 2. FINDINGS AND PURPOSE.--The legislature finds that violations of Section 6-4-13 NMSA 1978 threaten the integrity of the master settlement agreement and that enacting procedural requirements will safeguard the agreement and aid in its enforcement.

Section 3. DEFINITIONS.--As used in the Tobacco Escrow Fund Act:

A. "brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers such as "menthol", "lights", "kings" and "100s", and includes the use of a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors or other indicia similar to or identifiable with a previously known brand of cigarettes;

B. "cigarette" means "cigarette" as defined in Subsection D of Section 6-4-12 NMSA 1978;

C. "department" means the taxation and revenue department;

D. "directory" means a listing of tobacco product manufacturers and brand families that is developed, maintained and published by the attorney general;

E. "distributor" means a person required to affix stamps on cigarette packages pursuant to Section 7-12-5 NMSA 1978 or required to pay excise tax imposed on cigarettes pursuant to Section 7-12A-3 NMSA 1978. "Distributor" does not include a retailer of cigarette packages upon which stamps were already affixed when the packages were received by that retailer;

F. "master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers;

G. "nonparticipating manufacturer" means a tobacco product manufacturer that is not a participating manufacturer;

H. "participating manufacturer" means a tobacco product manufacturer that is a "participating manufacturer" as defined in Section II(jj) of the master settlement agreement and subsequent amendments to that section;

I. "qualified escrow fund" means "qualified escrow fund" as defined in Subsection F of Section 6-4-12 NMSA 1978;

J. "secretary" means the secretary of taxation and revenue;

K. "tobacco product manufacturer" means "tobacco product manufacturer" as defined in Subsection I of Section 6-4-12 NMSA 1978; and

L. "units sold" means "units sold" as defined in Subsection J of Section 6-4-12 NMSA 1978.

Section 4. CERTIFICATION BY TOBACCO PRODUCT MANUFACTURER.--

A. No later than April 30 of each year, a tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver to the attorney general, in the manner and on the form prescribed by the attorney general, a certification pursuant to this section. The certification shall:

(1) be made under penalty of perjury;

(2) state that as of the date of the certification, the tobacco product manufacturer is either a participating or a nonparticipating manufacturer; and

(3) include the information required pursuant to Subsections B or C of this section.

B. In its certification, a participating manufacturer shall include a complete list of its brand families.

C. In its certification, a nonparticipating manufacturer shall:

(1) certify that it is registered to do business in the state or has appointed an agent for service of process and has provided written notice to the attorney general in accordance with Section 7 of the Tobacco Escrow Fund Act;

(2) certify that it is in full compliance with Section 6-4-13 NMSA 1978, the Tobacco Escrow Fund Act and any rules promulgated pursuant to that act, including all annual payments as may be required by the attorney general;

(3) certify that it has established and maintains a qualified escrow fund governed by a qualified escrow agreement that has been reviewed and approved by the attorney general and provide:

(a) the name, address and telephone number of the financial institution where the fund is established;

(b) the account number of the fund and the subaccount number for the state;

(c) the amounts placed in the fund for cigarettes sold in the state during the preceding calendar year, including the date and amount of each deposit and any other evidence or verification of the amounts as the attorney general deems necessary; and

(d) the amount and date of each withdrawal or transfer of funds made at any time from the fund or from any other qualified escrow fund into which the nonparticipating manufacturer has made escrow payments pursuant to Section 6-4-13 NMSA 1978; and

(4) include a complete list of its brand families and:

(a) separately list the number of units sold in the state for each brand family during the preceding calendar year, indicating any brand family sold in the state during the preceding calendar year that is no longer being sold as of the date of certification; and

(b) indicate all of its brand families that have been sold in the state at any time during the current calendar year, identifying by name and address any other manufacturer of such brand families in the preceding or current calendar year.

D. A tobacco product manufacturer may not include a brand family in its certification unless:

(1) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year in the volume and shares determined pursuant to the master settlement agreement; or

(2) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed its cigarettes for purposes of Section 6-4-13 NMSA 1978.

E. A tobacco product manufacturer shall update the list of its brand families thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

F. A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for its certification to the attorney general for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

G. Nothing in this section shall limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of Section 6-4-13 NMSA 1978.

Section 5. DIRECTORY OF TOBACCO PRODUCT MANUFACTURERS AND CIGARETTE BRANDS.--

A. The attorney general shall develop, maintain and publish on its web site a directory listing all tobacco product manufacturers that have provided current, accurate and complete certifications as required by the Tobacco Escrow Fund Act and all brand families that are listed in those certifications. The attorney general shall not include or retain in the directory a nonparticipating manufacturer or brand family if:

(1) the nonparticipating manufacturer fails to provide the required certification or the attorney general determines that its certification is not in compliance with Section 4 of the Tobacco Escrow Fund Act; or

(2) the attorney general concludes that:

(a) all escrow payments required by Section 6-4-13 NMSA 1978 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(b) all outstanding final judgments, including interest thereon, for violations of Section 6-4-13 NMSA 1978 have not been fully satisfied for the brand family or the nonparticipating manufacturer.

B. The attorney general shall update the directory as necessary by adding or removing a tobacco product manufacturer or a brand family to keep the directory in conformity with the requirements of the Tobacco Escrow Fund Act.

C. A distributor shall provide a current electronic mail address to the attorney general for the purpose of receiving notifications as may be required pursuant to the Tobacco Escrow Fund Act.

Section 6. MAINTENANCE OF DIRECTORY--NOTICE.--

A. If the attorney general determines to remove from or to not include a tobacco product manufacturer or brand family in the directory, the attorney general shall provide by email or other practicable means notice of the preliminary determination to the tobacco product manufacturer's registered agent for service of process in the state; provided, however, that if one of the bases of removal or non-inclusion in the directory is the failure to satisfy Section 7 of the Tobacco Escrow Fund Act, the determination shall be final and no preliminary notice shall be necessary. The tobacco product manufacturer shall have ten business days from the date of the attorney general's notice of the preliminary determination to the registered agent for service of process in the state to establish, to the attorney general's satisfaction, compliance with Section 6-4-13 NMSA 1978 and the Tobacco Escrow Fund Act.

B. If the tobacco product manufacturer fails to establish said compliance within the ten-day period set forth above, the attorney general shall remove from or not include the tobacco product manufacturer or brand family in the directory. The determination to remove from or to not include a tobacco product manufacturer or brand family in the directory may be appealed to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

Section 7. AGENT FOR SERVICE OF PROCESS.--

A. A nonparticipating manufacturer not registered to do business in the state shall, as a condition precedent to having its name or its brand families listed and retained in the directory, appoint and continually engage without interruption a registered agent in this state for service of process on whom all process and any action or proceeding arising out of the enforcement of the Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978 may be served. The nonparticipating manufacturer shall provide to the attorney general the name, address and telephone number of its agent for service of process and shall provide any other information relating to its agent as may be requested by the attorney general.

B. A nonparticipating manufacturer shall provide written notice to the attorney general thirty calendar days prior to the termination of the authority of an agent appointed pursuant to Subsection A of this section. No less than five calendar days prior to the termination of an existing agent appointment, a nonparticipating manufacturer shall provide to the attorney general the name, address and telephone number of its newly appointed agent for service of process and shall provide any other information relating to the new appointment as may be requested by the attorney general. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

C. A nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as required by this section shall be deemed to have appointed the secretary of state as agent and may be proceeded against in the courts of this state by service of process upon the secretary of state; provided that the appointment of the secretary of state as agent shall not satisfy any other requirement of the Tobacco Escrow Fund Act.

Section 8. REPORTING OF INFORMATION--ESCROW INSTALLMENTS.--

A. A distributor shall submit to the department by the twenty-fifth day of each month a list by brand family of the total number of cigarettes, or equivalent stick count in the case of roll-your-own, for which the distributor affixed tax stamps or otherwise paid the tax due during the previous calendar month, and any other information that the department or attorney general may require. A distributor shall maintain and make available to the department and attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the department and attorney general for a period of five years.

B. The department and attorney general shall share information received pursuant to the Tobacco Escrow Fund Act, and may share information with other federal, state or local agencies for purposes of enforcement of that act, enforcement of Section 6-4-13 NMSA 1978 or enforcement of corresponding laws of other states.

C. The attorney general may require proof from a nonparticipating manufacturer that it has established a qualified escrow fund with verification of the amount of money in the fund exclusive of interest, including the balance, dates and amounts of deposits and dates and amounts of withdrawals.

D. The attorney general and the department may require a distributor or tobacco product manufacturer to submit additional information as necessary to determine compliance with the Tobacco Escrow Fund Act, including samples of the packaging or labeling of each brand family.

E. The attorney general may promulgate rules requiring a nonparticipating manufacturer to make escrow fund deposits annually and may require information sufficient to determine the adequacy of the amount of the annual deposit.

F. The attorney general or the department may seek an injunction to compel compliance with this section. In any action brought pursuant to this subsection, the state shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees.

Section 9. PENALTIES AND OTHER REMEDIES.--

A. It is unlawful for a person to:

(1) affix a tax stamp or otherwise pay the tax due on a package or other container of cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory; or

(2) sell, offer or possess for sale cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory.

B. The secretary may revoke or suspend the registration or license of a person licensed or registered pursuant to Section 7-12-9 or 7-12A-7 NMSA 1978 that violates Subsection A of this section.

C. Each stamp affixed, payment of tobacco tax, offer to sell, possession for sale or sale of cigarettes in violation of Subsection A of this section constitutes a separate violation. For each violation, the secretary may impose a civil penalty in an amount not to exceed the greater of five thousand dollars (\$5,000) or five hundred percent of the retail value of the cigarettes sold, offered for sale or possessed for sale.

D. Cigarettes that have been sold, offered for sale or possessed for sale in this state in violation of Subsection A of this section are contraband, are subject to seizure and forfeiture and shall be destroyed.

E. It is unlawful for a person to sell, distribute, acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knows or

should know are intended for distribution or sale in violation of Subsection A of this section. A person who violates this subsection is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

F. The attorney general or the department may seek an injunction to compel compliance with or to restrain a threatened or actual violation of Subsection A of this section. In any action brought pursuant to this subsection, the state shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees, if the state prevails.

Section 10. GENERAL PROVISIONS.--

A. The attorney general and the secretary shall promulgate rules to effectuate the purposes of the Tobacco Escrow Fund Act.

B. In an action brought by the state to enforce the provisions of the Tobacco Escrow Fund Act, the state shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees, if the state prevails.

C. If a court determines that a person has violated a provision of the Tobacco Escrow Fund Act, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the general fund.

D. The remedies and penalties provided in the Tobacco Escrow Fund Act are cumulative to each other and to penalties and remedies available under other laws.

Section 11. CONSTRUCTION OF ACT.--If a court finds that a provision of the Tobacco Escrow Fund Act and of Sections 6-4-12 and 6-4-13 NMSA 1978 conflict and cannot be harmonized, Sections 6-4-12 and 6-4-13 NMSA 1978 shall control. If a provision of the Tobacco Escrow Fund Act causes Sections 6-4-12 and 6-4-13 NMSA 1978 to no longer constitute a qualifying or model statute as those terms are defined in the master settlement agreement, that provision shall be invalid.

Section 12. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 137, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 2, 2003

CHAPTER 115

CHAPTER 115, LAWS 2003

AN ACT

RELATING TO FIRE PREVENTION; CREATING THE FIRE PLANNING TASK FORCE TO WORK WITH LOCAL GOVERNMENTS IN DEVELOPING MINIMUM STANDARDS FOR BUILDING CODES AND ORDINANCES THAT WILL REDUCE THE THREAT OF FOREST FIRES.

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

Section 1. FIRE PLANNING TASK FORCE--DUTIES.--

A. The "fire planning task force" is created. The task force shall consist of eleven members as follows:

- (1) the state fire marshal;
- (2) the director of the local government division of the department of finance and administration;
- (3) a representative of the commissioner of public lands;
- (4) a representative of the federal bureau of land management on behalf of the United States department of the interior, appointed by the governor after consulting with the department of the interior;
- (5) a representative of the United States forest service, appointed by the governor, after consulting with the forest service;
- (6) a member of a local fire department, appointed by the governor;
- (7) a representative of the New Mexico association of counties;
- (8) a representative of the New Mexico municipal league;
- (9) the director of the construction industries division of the regulation and licensing department;
- (10) the state forester; and

(11) a representative of an Indian nation, tribe or pueblo, appointed by the governor.

B. The chair of the task force shall be elected by the task force. The task force shall meet at the call of the chair.

C. The public members of the task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

D. The forestry division of the energy, minerals and natural resources department, with assistance from the department of finance and administration, shall provide staff for the task force.

E. The task force shall:

(1) identify those areas within the state that, because of the interface between forests and urban buildings, are the most vulnerable to danger from forest fires;

(2) develop standards for building codes and ordinances that will reduce the threat of forest fires. In developing the standards, the task force shall:

(a) recognize the distinction between altering existing situations and establishing standards for new construction;

(b) consider the benefits of thinning overgrown forests, conducting controlled burns, clearing spaces around homes and other structures, using noncombustible roofing materials and double-pane windows and taking other fire suppression or prevention measures;

(c) consider the impact of fire mitigation measures on wildlife; and

(d) solicit comments from affected landowners, land users and local governments;

(3) work with communities in the affected areas in adopting and implementing the building codes and ordinances; and

(4) report its progress and any recommendations for legislation to the governor and the legislature by December 15 of each year.

CHAPTER 116

CHAPTER 116, LAWS 2003

AN ACT

RELATING TO SPECIAL DISTRICTS; EXPANDING AREA OF ELIGIBILITY FOR CREATION OF WATER AND SANITATION DISTRICTS TO INCLUDE ALL COUNTIES.

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

Section 1. Section 73-21-4 NMSA 1978 (being Laws 1943, Chapter 80, Section 3, as amended) is amended to read:

"73-21-4. DEFINITIONS.--As used in the Water and Sanitation District Act:

A. "sewage disposal" includes all constructions for collection, transportation, pumping, treatment and final disposition of sewage;

B. "district" means a water and sanitation district that is established pursuant to that act and that is either entirely within or partly within and partly without one or more counties, provided those parts or parcels of the district lying in two or more counties are contiguous with one another, and further provided, a district created pursuant to a petition signed by the board of county commissioners of a county shall be entirely within that county;

C. "board" means the board of directors of a district;

D. "taxpaying elector of a district" means a person, qualified to vote at general elections in the state, who either has paid or incurred a general tax liability on real property within the district in the twelve months immediately preceding a designated time or event or who is purchasing real property within the district under a real estate contract where a property tax has been paid or incurred on the real property in the twelve months immediately preceding a designated time or event; and

E. "publication" means once a week for three consecutive weeks in at least one newspaper of general circulation in the county in which all or the major portion of the district is located. It is not necessary that publication be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of first publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication."

CHAPTER 117

CHAPTER 117, LAWS 2003

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROVIDING FOR SALES OF ALCOHOLIC BEVERAGES IN FOOD SERVICE FACILITIES IN STATE MUSEUMS; PROVIDING FOR SALES OF ALCOHOLIC BEVERAGES IN UNBROKEN PACKAGES AT MUNICIPAL BASEBALL PARKS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 60-6A-10 NMSA 1978 (being Laws 1981, Chapter 39, Section 27, as amended) is amended to read:

"60-6A-10. GOVERNMENTAL LICENSE.--

A. Except as provided in Subsection G of this section, a governmental entity may sell alcoholic beverages directly or through its lessee at a governmental facility if the governing body applies to the director for a governmental license. The governmental entity and its lessee shall be subject to all state laws and regulations governing dispensers.

B. A governmental license may be leased to a qualified lessee and may only be used by the lessee for its operation during events authorized by the governmental entity at the governmental facility designated on the governmental license. The governmental entity and its lessee shall not sell alcoholic beverages for consumption off the licensed premises. On the licensed premises of a municipal baseball park, the sale or service of alcoholic beverages in unbroken packages is allowed. Alcoholic beverages shall not be removed from the licensed premises of a municipal baseball park. A server as defined in Section 60-6E-3 NMSA 1978 is not required to be present in a skybox to serve alcoholic beverages to the person leasing the skybox or his guests.

C. A governmental entity holding a governmental license shall annually and not less than sixty days prior to the date for renewal of its license submit to the director documentary proof that its lessee is fully qualified to be a lessee of a governmental license. If the director finds that the lessee is qualified to lease a governmental license, the director shall renew the license for an additional period of one year. If the director determines that the proof is inadequate, he shall notify the governing body of his decision and shall conduct a hearing as provided by law. If the director finds

that the lessee does not qualify and the governmental entity does not change its lessee, the director shall revoke the license.

D. The provisions of Section 60-6A-18 NMSA 1978 shall not apply to governmental licenses.

E. For the purposes of this section:

(1) "governmental entity" means a municipality, a county, a state fair that is held for less than ten days per year, the state fair commission, a state museum or a state university;

(2) "governmental facility" means locations on property owned or operated by a governmental entity, including county fairs; state fairs held for less than ten days per year; convention centers; airports; civic centers; food service facilities in state museums; auditoriums; all facilities on the New Mexico state fairgrounds; facilities used for athletic competitions; golf courses, including golf courses required to be used for municipal purposes notwithstanding that there may be an existing club license at the same location operated by the same club licensee; and other facilities used for cultural or artistic performances, but "governmental facility" does not include tennis facilities;

(3) "lessee" means an individual, corporation, partnership, firm or association that fulfills the requirements set forth in Subsections A through D of Section 60-6B-2 NMSA 1978;

(4) "municipal baseball park" means a governmental facility owned by a government entity in a class A county having a population of three hundred fifty thousand or more pursuant to the most recent federal decennial census that is the home stadium of an affiliate of a professional baseball team and that may be used throughout the year for baseball games and other events; and

(5) "skybox" means a room or area of seating of a municipal baseball park, separated from the general seating and usually located in the upper decks of the park, leased to a person for that person's exclusive use during baseball games and at any other time throughout the year.

F. The provisions of Section 60-6B-10 NMSA 1978 as regards to golf courses owned by a governmental entity and civic centers owned and operated by a governmental entity shall not apply to governmental licenses.

G. A governmental entity that sells alcoholic beverages directly or indirectly through a lessee at a governmental facility that is a food service facility in a state museum or a golf course required to be used for municipal purposes may only sell beer and wine."

CHAPTER 118

CHAPTER 118, LAWS 2003

AN ACT

RELATING TO TAXATION; REQUIRING DISCLOSURE OF SALES PRICE INFORMATION FOR PROPERTY CLASSIFIED AS RESIDENTIAL PROPERTY FOR PROPERTY TAXATION PURPOSES; REQUIRING PROPERTY TRANSFER AFFIDAVIT TO BE FILED WITH THE COUNTY ASSESSOR; REQUIRING INFORMATION TO BE KEPT CONFIDENTIAL.

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

Section 1. Section 7-36-21.2 NMSA 1978 (being Laws 2000, Chapter 10, Section 2, as amended) is amended to read:

"7-36-21.2. LIMITATION ON INCREASES IN VALUATION OF RESIDENTIAL PROPERTY.--

A. Residential property shall be valued at its current and correct value in accordance with the provisions of the Property Tax Code; provided that for the 2001 and subsequent tax years, the value of a property in any tax year shall not exceed the higher of one hundred three percent of the value in the tax year prior to the tax year in which the property is being valued or one hundred six and one-tenth percent of the value in the tax year two years prior to the tax year in which the property is being valued. This limitation on increases in value does not apply to:

(1) a residential property in the first tax year that it is valued for property taxation purposes;

(2) any physical improvements made to the property during the year immediately prior to the tax year or omitted in a prior tax year; or

(3) valuation of a residential property in any tax year in which:

(a) a change of ownership of the property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined; or

(b) the use or zoning of the property has changed in the year prior to the tax year.

B. If a change of ownership of residential property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined, the value of the property shall be its current and correct value as determined pursuant to the general valuation provisions of the Property Tax Code.

C. To assure that the values of residential property for property taxation purposes are at current and correct values in all counties prior to application of the limitation in Subsection A of this section, the department shall determine for the 2000 tax year the sales ratio pursuant to Section 7-36-18 NMSA 1978 or, if a sales ratio cannot be determined pursuant to that section, conduct a sales-ratio analysis using both independent appraisals by the department and sales. If the sales ratio for a county for the 2000 tax year is less than eighty-five, as measured by the median ratio of value for property taxation purposes to sales price or independent appraisal by the department, the county shall not be subject to the limitations of Subsection A of this section and shall conduct a reassessment of residential property in the county so that by the 2003 tax year, the sales ratio is at least eighty-five. After such reassessment, the limitation on increases in valuation in this section shall apply in those counties in the earlier of the 2004 tax year or the first tax year following the tax year that the county has a sales ratio of eighty-five or higher, as measured by the median ratio of value for property taxation purposes to sales value or independent appraisal by the department. Thereafter, the limitation on increases in valuation of residential property for property taxation purposes in this section shall apply to subsequent tax years in all counties.

D. The provisions of this section do not apply to residential property for any tax year in which the property is subject to the valuation limitation in Section 7-36-21.3 NMSA 1978.

E. As used in this section, "change of ownership" means a transfer to a transferee by a transferor of all or any part of the transferor's legal or equitable ownership interest in residential property except for a transfer:

(1) to a trustee for the beneficial use of the spouse of the transferor or the surviving spouse of a deceased transferor;

(2) to the spouse of the transferor that takes effect upon the death of the transferor;

(3) that creates, transfers or terminates, solely between spouses, any co-owner's interest;

(4) to a child of the transferor, who occupies the property as his principal residence at the time of transfer; provided that the first subsequent tax year in which that person does not qualify for the head of household exemption on that property, a change of ownership shall be deemed to have occurred;

(5) that confirms or corrects a previous transfer made by a document that was recorded in the real estate records of the county in which the real property is located;

(6) for the purpose of quieting the title to real property or resolving a disputed location of a real property boundary;

(7) to a revocable trust by the transferor with the transferor, the transferor's spouse or a child of the transferor as beneficiary; or

(8) from a revocable trust described in Paragraph (7) of this subsection back to the settlor or trustor or to the beneficiaries of the trust."

Section 2. A new Section 7-38-12.1 NMSA 1978 is enacted to read:

"7-38-12.1. PROPERTY TRANSFERS--AFFIDAVIT TO BE FILED WITH ASSESSOR.--

A. After January 1, 2004, a person presenting a deed, real estate contract or memorandum of real estate contract for recording with a county clerk shall also file with the county assessor within thirty days of the date of filing with the county clerk an affidavit signed and completed in accordance with the provisions of Subsection B of this section.

B. The affidavit required for submission shall be in a form developed by the property tax division and signed by the transferors or their authorized agents or the transferees or their authorized agents of any interest in real property transferred by deed or real estate contract. The affidavit shall contain at least the following information to be used only for analytical and statistical purposes in the application of appraisal methods:

(1) the complete names of all transferors and transferees;

(2) the current mailing addresses of all transferors and transferees;

(3) the legal description of the real property interest transferred as it appears in the document of transfer;

(4) the full consideration, including money or any other thing of value, paid or exchanged for the transfer; and

(5) the value and a description of personal property that is included in the sale price.

C. Upon receipt of the affidavit required by Subsection A of this section, the county assessor shall place the date of receipt on the original affidavit. The county

assessor shall retain the original affidavit as a permanent, confidential record and as proof of compliance. The assessor shall index the affidavits in a manner that permits cross-referencing to other records in the assessor's office pertaining to the specific property described in the affidavit. The affidavit and its contents are not part of the valuation record of the assessor.

D. The affidavit required by Subsection A of this section shall not be required for:

(1) a deed that results from the payment in full or forfeiture by a transferee under a recorded real estate contract or recorded memorandum of real estate contract;

(2) a lease of or easement on real property, regardless of the length of term;

(3) a deed, patent or contract for sale or transfer of real property in which an agency or representative of the United States, New Mexico or any political subdivision of the state is the named grantor or grantee and authorized transferor or transferee;

(4) a quitclaim deed to quiet title or clear boundary disputes;

(5) a conveyance of real property executed pursuant to court order;

(6) a deed to an unpatented mining claim;

(7) an instrument solely to provide or release security for a debt or obligation;

(8) an instrument that confirms or corrects a deed previously recorded;

(9) an instrument between husband and wife or parent and child with only nominal actual consideration therefor;

(10) an instrument arising out of a sale for delinquent taxes or assessments;

(11) an instrument accomplishing a court-ordered partition;

(12) an instrument arising out of a merger or incorporation;

(13) an instrument by a subsidiary corporation to its parent corporation for no consideration, nominal consideration or in sole consideration of the cancellation or surrender of the subsidiary's stock;

(14) an instrument from a person to a trustee or from a trustee to a trust beneficiary with only nominal actual consideration therefor;

(15) an instrument to or from an intermediary for the purpose of creating a joint tenancy estate or some other form of ownership; or

(16) an instrument delivered to establish a gift or a distribution from an estate of a decedent or trust.

E. The affidavit required by Subsection A of this section shall not be construed to be a valuation record pursuant to Section 7-38-19 NMSA 1978.

F. Prior to November 1, 2003, the department shall print and distribute to each county assessor affidavit forms for distribution to the public upon request."

Section 3. A new Section 7-38-12.2 NMSA 1978 is enacted to read:

"7-38-12.2. PENALTIES.--

A. A person who intentionally refuses to make a required report within the time period specified under the provisions of Section 7-38-12.1 NMSA 1978 or who knowingly makes a false statement on an affidavit required under the provisions of Section 7-38-12.1 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by the imposition of a fine of not more than one thousand dollars (\$1,000).

B. The secretary, any employee or any former employee of the department or any other person subject to the provisions of Section 7-38-12.1 NMSA 1978 who willfully releases information in violation of that section, except as provided in Section 7-38-4 NMSA 1978 or as part of a protest proceeding as defined in Section 7-38-24 NMSA 1978, is guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000)."

Section 4. APPLICABILITY.--The provisions of this act apply to the 2004 and subsequent property tax years.

HOUSE BILL 299, AS AMENDED

CHAPTER 119

CHAPTER 119, LAWS 2003

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR MAIL-IN BALLOTS FOR BOND ELECTIONS IN CERTAIN ARROYO FLOOD CONTROL AUTHORITIES.

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

Section 1. Section 72-19-28 NMSA 1978 (being Laws 1990, Chapter 14, Section 28, as amended) is amended to read:

"72-19-28. ELECTIONS.--Each biennial election of directors shall be conducted at the time of the general election under the direction of the Sandoval county clerk and in accordance with the election laws of New Mexico. Any other election of the authority, including an election to seek approval for the issuance of bonds, shall be conducted at any time approved by the board in accordance with the election laws of New Mexico. Elections for the issuance of bonds may be by mail-in ballot pursuant to the procedures set forth in the Mail Ballot Election Act."

HOUSE BILL 369, AS AMENDED

CHAPTER 120

CHAPTER 120, LAWS 2003

AN ACT

RELATING TO HEALTH FACILITIES; REQUIRING COORDINATED INVESTIGATION OF ALLEGATIONS OF ABUSE, NEGLECT AND EXPLOITATION; AMENDING A SECTION OF THE NMSA 1978.

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

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--HEARINGS--APPEALS.--

A. A health facility shall not 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 that 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 rules 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 rules of the department. Applications for hospital licenses shall include evidence that the bylaws or rules 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 a health facility, if the department finds a violation of its rules, the department 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 rules 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 rules of the department or, if not in compliance with a rule, has been granted a waiver or variance of that rule by the department pursuant to procedures, conditions and guidelines adopted by rule 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. A 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 that accreditation. License renewals shall be issued upon application submitted by the health 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 inpatient 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 a health facility or may impose on a health facility an intermediate sanction and a 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 rule of the department. If immediate action is required to protect human health and safety, the secretary may suspend a license or impose an 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 of the hearing, identity of the hearing officer, subject matter of the hearing and alleged violations.

J. A hearing held pursuant to provisions of this section shall be conducted in accordance with adjudicatory hearing rules and procedures adopted by rule 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 the final decision of the department pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

L. A complaint about a health facility received by the department pursuant to this section shall be promptly investigated and appropriate action shall be taken if substantiated. The department shall develop a health facilities protocol in conjunction with the human services department, the protective services division of the children, youth and families department, the office of the state long-term care ombudsman and other appropriate agencies to ensure the health, safety and rights of individuals in health facilities. The health facilities' protocol shall require:

(1) cross-reference among agencies pursuant to this subsection of an allegation of abuse, neglect or exploitation;

(2) an investigation, within the strict priority time frames established by each protocol member's rules, of an allegation or referral of abuse, neglect or exploitation after the department has made a good cause determination that abuse, neglect or exploitation occurred;

(3) an agency to share its investigative information and findings with other agencies, unless otherwise prohibited by law; and

(4) require the receiving agency to accept the information provided pursuant to Paragraph (3) of this subsection as potential evidence to initiate and conduct investigations.

M. A complaint received by the department pursuant to this section shall not be disclosed publicly in a manner as to identify any individuals or health facilities if upon investigation the complaint is unsubstantiated.

N. Notwithstanding any other provision of this section, when there are reasonable grounds to believe that a 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 rules 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."

HOUSE BILL 535, AS AMENDED

CHAPTER 121

CHAPTER 121, LAWS 2003

AN ACT

RELATING TO THE NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY;
ESTABLISHING THE ENERGETIC MATERIALS RESEARCH AND TESTING
CENTER.

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

Section 1. ENERGETIC MATERIALS RESEARCH AND TESTING CENTER ESTABLISHED--FUNCTION OF CENTER.--

A. The board of regents of the New Mexico institute of mining and technology shall establish the energetic materials research and testing center.

B. The function of the energetic materials research and testing center is to:

(1) conduct research, development, testing and evaluation of ordnance, explosives and energetic materials;

(2) conduct programs in energetic materials and related technologies that provide research opportunities for New Mexico institute of mining and technology undergraduate students, graduate students, faculty and staff;

(3) conduct training courses for governmental, academic and commercial entities in explosives handling and safety, emergency response, terrorist incident response and counterterrorism methods;

(4) prepare, publish and distribute reports and other documentation presenting the scientific and technical results of the energetic materials research and testing center efforts; and

(5) actively participate in technical and professional societies and organizations, including attending and presenting papers and talks at their functions and conferences.

HOUSE BILL 721

CHAPTER 122

CHAPTER 122, LAWS 2003

AN ACT

RELATING TO TRUSTS; ENACTING THE UNIFORM TRUST CODE; REPEALING SECTIONS OF THE NMSA 1978.

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

ARTICLE 1 GENERAL PROVISIONS AND DEFINITIONS

Section 1-101. SHORT TITLE.--This act may be cited as the "Uniform Trust Code".

Section 1-102. SCOPE.--The Uniform Trust Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust.

Section 1-103. DEFINITIONS.--As used in the Uniform Trust Code:

A. "action", with respect to an act of a trustee, includes a failure to act;

B. "beneficiary" means a person that:

(1) has a present or future beneficial interest in a trust, vested or contingent; or

(2) in a capacity other than that of trustee, holds a power of appointment over trust property;

C. "charitable trust" means a trust or portion of a trust created for a charitable purpose described in Subsection A of Section 4-405 of the Uniform Trust Code;

D. "conservator" means a person appointed by the court to administer the estate of a minor or adult individual;

E. "environmental law" means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment;

F. "guardian" means a person appointed by the court or a parent to make decisions regarding the support, care, education, health and welfare of a minor or adult person. The term does not include a guardian ad litem;

G. "interests of the beneficiaries" means the beneficial interests provided in the terms of the trust;

H. "jurisdiction", with respect to a geographic area, includes a state or country;

I. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity;

J. "power of withdrawal" means an exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest;

K. "property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein;

L. "qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(1) is a distributee or permissible distributee of trust income or principal;

(2) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in Paragraph (1) of this subsection terminated on that date; or

(3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;

M. "revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest;

N. "settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution, except to the extent another person has the power to revoke or withdraw that portion;

O. "spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest;

P. "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. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state;

Q. "terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding;

R. "trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto; and

S. "trustee" includes an original trustee, an additional trustee, a successor trustee and a co-trustee.

Section 1-104. KNOWLEDGE.--

A. Subject to Subsection B of this section, a person has knowledge of a fact if the person:

(1) has actual knowledge or should have knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

B. An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An

organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the employee's regular duties or the employee knows that a matter involving the trust would be materially affected by the information.

Section 1-105. DEFAULT AND MANDATORY RULES.--

A. Except as otherwise provided in the terms of the trust, the Uniform Trust Code governs the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

B. The terms of a trust prevail over any provision of the Uniform Trust Code except:

- (1) the requirements for creating a trust;
- (2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries and that the trust have a purpose that is lawful, not contrary to public policy and possible to achieve;
- (4) the power of the court to modify or terminate a trust under Sections 4-410 through 4-416 of the Uniform Trust Code;
- (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of the Uniform Trust Code;
- (6) the power of the court under Section 7-702 of the Uniform Trust Code to require, dispense with or modify or terminate a bond;
- (7) the power of the court under Subsection B of Section 7-708 of the Uniform Trust Code to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high;
- (8) except for a qualified beneficiary who has not attained twenty-five years of age, the duty under Paragraphs (2) and (3) of Subsection B of Section 8-813 of the Uniform Trust Code to notify qualified beneficiaries of an irrevocable trust of the existence of the trust, of the identity of the trustee and of their right to request reports of the trustee;

(9) the duty under Subsection A of Section 8-813 of the Uniform Trust Code to respond to the request of a beneficiary of an irrevocable trust for a trustee's reports and other information reasonably related to the administration of a trust;

(10) the effect of an exculpatory term under Section 10-1007 of the Uniform Trust Code;

(11) the rights under Sections 10-1008 through 10-1012 of the Uniform Trust Code of a person other than a trustee or beneficiary;

(12) periods of limitation for commencing a judicial proceeding;

(13) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(14) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 2-203 and 2-204 of the Uniform Trust Code.

Section 1-106. COMMON LAW OF TRUSTS--PRINCIPLES OF EQUITY.--The common law of trusts and principles of equity supplement the Uniform Trust Code, except to the extent modified by that code or another statute of this state.

Section 1-107. GOVERNING LAW.--The meaning and effect of the terms of a trust are determined by:

A. the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

B. in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

Section 1-108. PRINCIPAL PLACE OF ADMINISTRATION.--

A. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

B. A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration and the interests of the beneficiaries.

C. Without precluding the right of the court to order, approve or disapprove a transfer, the trustee, in furtherance of the duty prescribed by Subsection B of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

D. The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur;
and

(5) the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

E. The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

F. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 7-704 of the Uniform Trust Code.

Section 1-109. METHODS AND WAIVER OF NOTICE.--

A. Notice to a person under the Uniform Trust Code or the sending of a document to a person under that code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class

mail, personal delivery, delivery to the person's last known place of residence or place of business or a properly directed electronic message.

B. Notice otherwise required under the Uniform Trust Code or a document otherwise required to be sent under that code need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

C. Notice under the Uniform Trust Code or the sending of a document under that code may be waived by the person to be notified or sent the document.

D. Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

Section 1-110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.-

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A. Whenever notice to qualified beneficiaries of a trust is required under the Uniform Trust Code, the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice.

B. A charitable organization expressly designated to receive distributions under the terms of a charitable trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in Section 4-408 or 4-409 of the Uniform Trust Code has the rights of a qualified beneficiary under that code.

C. The attorney general of this state has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

Section 1-111. NONJUDICIAL SETTLEMENT AGREEMENTS.--

A. For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

B. Except as otherwise provided in Subsection C of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

C. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under the Uniform Trust Code or other applicable law.

D. Matters that may be resolved by a nonjudicial settlement agreement include:

- (1) the interpretation or construction of the terms of the trust;
- (2) the approval of a trustee's report or accounting;
- (3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) transfer of a trust's principal place of administration; and
- (6) liability of a trustee for an action relating to the trust.

E. Any interested person may request the court to approve a nonjudicial settlement agreement to determine whether the representation as provided in Article 3 of the Uniform Trust Code was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.

Section 1-112. RULES OF CONSTRUCTION.--The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

ARTICLE 2 JUDICIAL PROCEEDINGS

Section 2-201. ROLE OF COURT IN ADMINISTRATION OF

TRUST.--

A. The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

B. A trust is not subject to continuing judicial supervision unless ordered by the court.

C. A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

Section 2-202. JURISDICTION OVER TRUSTEE AND BENEFICIARY.-

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A. By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

B. With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

C. This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary or other person receiving property from the trust.

Section 2-203. SUBJECT-MATTER JURISDICTION.--

A. The district court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

B. The district court has concurrent jurisdiction with other courts of this state of other proceedings involving a trust.

ARTICLE 3 REPRESENTATION

Section 3-301. REPRESENTATION--BASIC EFFECT.--

A. Notice to a person who may represent and bind another person under this article has the same effect as if notice were given directly to the other person.

B. The consent of a person who may represent and bind another person under this article is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

C. Except as otherwise provided in Sections 4-411 and 6-602 of the Uniform Trust Code, a person who under this article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

Section 3-302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT.--To the extent there is no conflict of interest between the holder of a general

testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default or otherwise, are subject to the power.

Section 3-303. REPRESENTATION BY FIDUCIARIES AND PARENTS.--To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

A. a conservator may represent and bind the estate that the conservator controls;

B. a guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;

C. an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

D. a trustee may represent and bind the beneficiaries of the trust;

E. a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

F. a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed.

Section 3-304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST.--Unless otherwise represented, a minor, incapacitated or unborn person, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

Section 3-305. APPOINTMENT OF REPRESENTATIVE.--

A. If the court determines that an interest is not represented under this article, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent and otherwise represent, bind and act on behalf of a minor, incapacitated or unborn person, or a person whose

identity or location is unknown. A representative may be appointed to represent several persons or interests.

B. A representative may act on behalf of the person represented with respect to any matter arising under the Uniform Trust Code, whether or not a judicial proceeding concerning the trust is pending.

C. In making decisions, a representative may consider the general benefit accruing to the living members of the person's family.

ARTICLE 4 CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

Section 4-401. METHODS OF CREATING TRUST.--A trust may be created by:

A. transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

B. declaration by the owner of property that the owner holds identifiable property as trustee; or

C. exercise of a power of appointment in favor of a trustee.

Section 4-402. REQUIREMENTS FOR CREATION.--

A. A trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(a) a charitable trust;

(b) a trust for the care of an animal, as provided in Section 4-408 of the Uniform Trust Code; or

(c) a trust for a noncharitable purpose, as provided in Section 4-409 of the Uniform Trust Code;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole beneficiary.

B. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

C. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

Section 4-403. TRUSTS CREATED IN OTHER JURISDICTIONS.--A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

A. the settlor was domiciled, had a place of abode or was a national;

B. a trustee was domiciled or had a place of business; or

C. any trust property was located.

Section 4-404. TRUST PURPOSES.--A trust may be created only to the extent its purposes are lawful, not contrary to public policy and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

Section 4-405. CHARITABLE PURPOSES--ENFORCEMENT.--

A. A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes or other purposes the achievement of which is beneficial to the community.

B. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

C. The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

D. The corpus and income of a charitable trust may only be expended in furtherance of the charitable mission of the charitable trust, unless that charitable mission is amended or the charitable trust terminated pursuant to a cy pres proceeding as described in Section 4-413 of the Uniform Trust Code.

E. The attorney general, as parens patriae, shall have authority to maintain a proceeding to enforce the charitable trust and its charitable mission.

F. Nothing contained in the Uniform Trust Code shall limit the authority of the attorney general under the Charitable Solicitations Act.

Section 4-406. CREATION OF TRUST INDUCED BY FRAUD, DURESS OR UNDUE INFLUENCE.--A trust is void to the extent its creation was induced by fraud, duress or undue influence.

Section 4-407. EVIDENCE OF ORAL TRUST.--Except as required by a statute other than the Uniform Trust Code, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

Section 4-408. TRUST FOR CARE OF ANIMAL.--

A. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

B. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

C. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Section 4-409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY.--Except as otherwise provided in Section 4-408 of the Uniform Trust Code or by another statute, the following rules apply:

A. a trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than twenty-one years.

B. a trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court; and

C. property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Section 4-410. MODIFICATION OR TERMINATION OF TRUST-- PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.--

A. In addition to the methods of termination prescribed by Sections 4-411 through 4-414 of the Uniform Trust Code, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved or the purposes of the trust have become unlawful, contrary to public policy or impossible to achieve.

B. A proceeding to approve or disapprove a proposed modification or termination under Sections 4-411 through 4-416 of the Uniform Trust Code or a trust combination or division under Section 4-417 of that code may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under Section 4-411 of that code may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 4-413 of that code.

Section 4-411. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.--

A. A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

B. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

C. A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

D. Upon termination of a trust under Subsection A or B of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

E. If not all of the beneficiaries consent to a proposed modification or termination of the trust under Subsection A or B of this section, the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

Section 4-412. MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY.--

A. The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

B. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

Section 4-413. CY PRES.--

A. Except as otherwise provided in Subsection B of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

B. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under Subsection A of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) the trust property is to revert to the settlor and the settlor is still living; or

(2) fewer than twenty-one years have elapsed since the date of the trust's creation.

C. The attorney general as parens patriae is a necessary party to any cy pres proceeding in the Uniform Trust Code.

Section 4-414. TERMINATION OF UNECONOMIC TRUST.--

A. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than fifty thousand dollars (\$50,000) may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

B. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

D. This section does not apply to an easement for conservation or preservation.

Section 4-415. REFORMATION TO CORRECT MISTAKES.--The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Section 4-416. MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES.--To achieve the settlor's tax objectives, the court

may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

Section 4-417. COMBINATION AND DIVISION OF TRUSTS.--After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

ARTICLE 5

CREDITOR'S CLAIMS--SPENDTHRIFT AND DISCRETIONARY TRUSTS

Section 5-501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE.--To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

Section 5-502. SPENDTHRIFT PROVISION.--

A. A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

B. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

C. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

Section 5-503. EXCEPTIONS TO SPENDTHRIFT PROVISION.--

A. As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

B. Even if a trust contains a spendthrift provision, a beneficiary's child, spouse or former spouse who has a judgment or court order against the beneficiary for

support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

C. A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.

Section 5-504. DISCRETIONARY TRUSTS--EFFECT OF

STANDARD.--

A. As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

B. Except as otherwise provided in Subsection C of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.

C. To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

D. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

Section 5-505. CREDITOR'S CLAIM AGAINST SETTLOR.--

A. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) during the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors;

(2) with respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and

(3) after the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses and allowances.

B. For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in Section 2041(b)(2), 2514(e) or 2503(b) of the Internal Revenue Code of 1986, as amended.

Section 5-506. OVERDUE DISTRIBUTION.--Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

Section 5-507. PERSONAL OBLIGATIONS OF TRUSTEE.--Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

ARTICLE 6 REVOCABLE TRUSTS

Section 6-601. CAPACITY OF SETTLOR OF REVOCABLE TRUST.--The capacity required to create, amend, revoke or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Section 6-602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.--

A. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of the Uniform Trust Code.

B. If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

C. The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(a) a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(b) any other method manifesting clear and convincing evidence of the settlor's intent.

D. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

E. A settlor's powers with respect to revocation, amendment or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

F. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

G. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

Section 6-603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL.-

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A. While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

B. If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

C. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

ARTICLE 7 OFFICE OF TRUSTEE

Section 7-701. ACCEPTING OR DECLINING TRUSTEESHIP.--

A. Except as otherwise provided in Subsection C of this section, a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee or otherwise indicating acceptance of the trusteeship.

B. A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

C. A person designated as trustee, without accepting the trusteeship, may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental law or other law or for any other purpose.

Section 7-702. TRUSTEE'S BOND.--

A. A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

B. The court may specify the amount of a bond, its liabilities and whether sureties are necessary. The court may modify or terminate a bond at any time.

Section 7-703. CO-TRUSTEES.--

A. Co-trustees who are unable to reach a unanimous decision may act by majority decision.

B. If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for the trust.

C. A co-trustee must participate in the performance of a trustee's function unless the co-trustee is unavailable to perform the function because of absence, illness, disqualification under other law or other temporary incapacity, or the co-trustee has properly delegated the performance of the function to another trustee.

D. If a co-trustee is unavailable to perform duties because of absence, illness, disqualification under other law or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining co-trustee or a majority of the remaining co-trustees may act for the trust.

E. A trustee may not delegate to a co-trustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

F. Except as otherwise provided in Subsection G of this section, a trustee who does not join in an action of another trustee is not liable for the action.

G. Each trustee shall exercise reasonable care to:

(1) prevent a co-trustee from committing a serious breach of trust;
and

(2) compel a co-trustee to redress a serious breach of trust.

H. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any co-trustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

Section 7-704. VACANCY IN TRUSTEESHIP--APPOINTMENT OF SUCCESSOR.--

A. A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or
- (6) a guardian or conservator is appointed for an individual serving as trustee.

B. If one or more co-trustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

C. A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

- (1) by a person designated in the terms of the trust to act as successor trustee;
- (2) by a person appointed by unanimous agreement of the qualified beneficiaries; or
- (3) by a person appointed by the court.

D. A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

- (1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection; or

(3) by a person appointed by the court.

E. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

Section 7-705. RESIGNATION OF TRUSTEE.--

A. A trustee may resign:

(1) upon at least thirty days' notice to the qualified beneficiaries and all co-trustees; or

(2) with the approval of the court.

B. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

C. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

Section 7-706. REMOVAL OF TRUSTEE.--

A. The settlor, a co-trustee or a beneficiary may request the court to remove a trustee or a trustee may be removed by the court on its own initiative.

B. The court may remove a trustee if:

(1) the trustee has committed a serious breach of trust;

(2) lack of cooperation among co-trustees substantially impairs the administration of the trust;

(3) because of unfitness, unwillingness or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent

with a material purpose of the trust, and a suitable co-trustee or successor trustee is available.

C. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief as may be necessary to protect the trust property or the interests of the beneficiaries.

Section 7-707. DELIVERY OF PROPERTY BY FORMER TRUSTEE.--

A. Unless a co-trustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

B. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the co-trustee, successor trustee or other person entitled to it.

Section 7-708. COMPENSATION OF TRUSTEE.--

A. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

B. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

Section 7-709. REIMBURSEMENT OF EXPENSES.--

A. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

B. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

**ARTICLE 8
DUTIES AND POWERS OF TRUSTEE**

Section 8-801. DUTY TO ADMINISTER TRUST.--Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries and in accordance with the Uniform Trust Code.

Section 8-802. DUTY OF LOYALTY.--

A. A trustee shall administer the trust solely in the interests of the beneficiaries.

B. Subject to the rights of persons dealing with or assisting the trustee as provided in Section 10-1011 of the Uniform Trust Code, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the court;

(3) the beneficiary consented to the trustee's conduct, ratified the transaction or released the trustee in compliance with Section 10-1008 of the Uniform Trust Code; or

(4) the transaction involved a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

C. A sale, encumbrance or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's descendants, siblings, parents or the spouse of any of them;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

D. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

E. A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

F. An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the Uniform Prudent Investor Act. The trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under Section 8-813 of the Uniform Trust Code to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined.

G. In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

H. This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

I. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

Section 8-803. IMPARTIALITY.--If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests.

Section 8-804. PRUDENT ADMINISTRATION.--A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

Section 8-805. COSTS OF ADMINISTRATION.--In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

Section 8-806. TRUSTEE'S SKILLS.--A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

Section 8-807. DELEGATION BY TRUSTEE.--

A. A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. A trustee who complies with Subsection A of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

D. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Section 8-808. POWERS TO DIRECT.--

A. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

B. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

C. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

D. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Section 8-809. CONTROL AND PROTECTION OF TRUST PROPERTY.--A trustee shall take reasonable steps to take control of and protect the trust property.

Section 8-810. RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY.--

A. A trustee shall keep adequate records of the administration of the trust.

B. A trustee shall keep trust property separate from the trustee's own property.

C. Except as otherwise provided in Subsection D of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

D. If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

Section 8-811. ENFORCEMENT AND DEFENSE OF CLAIMS.--A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

Section 8-812. COLLECTING TRUST PROPERTY.--A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust known to the trustee to have been committed by a former trustee.

Section 8-813. DUTY TO INFORM AND REPORT.--

A. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

B. A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address and telephone number;

(3) within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument and of the right to a trustee's report as provided in Subsection C of this section; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

C. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a co-trustee remains in office, a report

must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

D. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

Section 8-814. DISCRETIONARY POWERS--TAX SAVINGS.--

A. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole" or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

B. Subject to Subsection D of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as amended; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

C. A power whose exercise is limited or prohibited by Subsection B of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

D. Subsection B of this section does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(b)(5) of the Internal Revenue Code of 1986, as amended, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as amended.

Section 8-815. GENERAL POWERS OF TRUSTEE.--

A. A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; or

(2) except as limited by the terms of the trust:

(a) all powers over the trust property that an unmarried competent owner has over individually owned property;

(b) any other powers appropriate to achieve the proper investment, management and distribution of the trust property; and

(c) any other powers conferred by the Uniform Trust Code.

B. The exercise of a power is subject to the fiduciary duties prescribed by this article.

Section 8-816. SPECIFIC POWERS OF TRUSTEE.--Without limiting the authority conferred by Section 8-815 of the Uniform Trust Code, a trustee may:

A. collect trust property and accept or reject additions to the trust property from a settlor or any other person;

B. acquire or sell property, for cash or on credit, at public or private sale;

C. exchange, partition or otherwise change the character of trust property;

D. deposit trust money in an account in a regulated financial-service institution;

E. borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

F. with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members or property owners, including merging, dissolving or otherwise changing the form of business organization or contributing additional capital;

G. with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(1) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(2) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(3) pay calls, assessments and other sums chargeable or accruing against the securities and sell or exercise stock subscription or conversion rights; and

(4) deposit the securities with a depository or other regulated financial-service institution;

H. with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

I. enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

J. grant an option involving a sale, lease or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

K. insure the property of the trust against damage or loss and insure the trustee, the trustee's agents and beneficiaries against liability arising from the administration of the trust;

L. abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

M. with respect to possible liability for violation of environmental law:

(1) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(2) take action to prevent, abate or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(3) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(4) compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

(5) pay the expense of any inspection, review, abatement or remedial action to comply with environmental law;

N. pay or contest any claim, settle a claim by or against the trust and release, in whole or in part, a claim belonging to the trust;

O. pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

P. exercise elections with respect to federal, state and local taxes;

Q. select a mode of payment under any employee benefit or retirement plan, annuity or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

R. make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

S. pledge trust property to guarantee loans made by others to the beneficiary;

T. appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security and remove any trustee so appointed;

U. pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(1) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(2) paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

(3) if the trustee does not know of a conservator, guardian, custodian or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(4) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

V. on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes and adjust for resulting differences in valuation;

W. resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration or other procedure for alternative dispute resolution;

X. prosecute or defend an action, claim or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

Y. sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

Z. on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

Section 8-817. DISTRIBUTION UPON TERMINATION.--

A. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent, but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

B. Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses and taxes.

C. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

**ARTICLE 9
is reserved.**

**ARTICLE 10
LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS
DEALING WITH TRUSTEES**

Section 10-1001. BREACH OF TRUST.--A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

Section 10-1002. DAMAGES FOR BREACH OF TRUST.--If more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

Section 10-1003. DAMAGES IN ABSENCE OF BREACH.--

A. A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

B. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

Section 10-1004. ATTORNEY FEES AND COSTS.--In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by

another party or from the trust that is the subject of the controversy.

Section 10-1005. RELIANCE ON TRUST INSTRUMENT.--A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

Section 10-1006. EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION.--If the happening of an event, including marriage, divorce, performance of educational requirements or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

Section 10-1007. EXCULPATION OF TRUSTEE.--

A. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

B. An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

Section 10-1008. BENEFICIARY'S CONSENT, RELEASE OR RATIFICATION.--A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach or ratified the transaction constituting the breach, unless:

A. the consent, release or ratification of the beneficiary was induced by improper conduct of the trustee; or

B. at the time of the consent, release or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

Section 10-1009. LIMITATION ON PERSONAL LIABILITY OF TRUSTEE.--

A. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

B. A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

C. A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

Section 10-1010. is reserved.

Section 10-1011. PROTECTION OF PERSON DEALING WITH TRUSTEE.--

A. A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

B. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

C. A person who in good faith delivers assets to a trustee need not ensure their proper application.

D. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.

E. Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Section 10-1012. CERTIFICATION OF TRUST.--

A. Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

- (1) that the trust exists and the date the trust instrument was executed;
- (2) the identity of the settlor;
- (3) the identity and address of the currently acting trustee;
- (4) the powers of the trustee;
- (5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
- (6) the authority of co-trustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;
- (7) the trust's taxpayer identification number;
- (8) the manner of taking title to trust property; and
- (9) if an action is to be undertaken through an agent, that delegation of the action to an agent is not prohibited by the trust instrument.

B. A certification of trust may be signed or otherwise authenticated by any trustee. The recipient of a certification of trust that will be used to affect title to real property may require the certification to be acknowledged by a trustee so as to allow it to be recorded.

C. A certification of trust must state that the trust has not been revoked, modified or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

D. A certification of trust need not contain the dispositive terms of a trust.

E. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that

designate the trustee and confer upon the trustee the power to act in the pending transaction.

F. A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

G. A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

H. A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

I. This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

ARTICLE 11 MISCELLANEOUS PROVISIONS

Section 11-1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Trust Code, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 11-1102. ELECTRONIC RECORDS AND SIGNATURES.--The provisions of the Uniform Trust Code governing the legal effect, validity or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the federal Electronic Signatures in Global and National Commerce Act and supersede, modify and limit the requirements of the federal Electronic Signatures in Global and National Commerce Act.

Section 11-1103. SEVERABILITY.--If any provision of the Uniform Trust Code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or

applications of that code which can be given effect without the invalid provision or application, and to this end the provisions of the code are severable.

Section 11-1104. APPLICATION TO EXISTING RELATIONSHIPS.--

A. Except as otherwise provided in the Uniform Trust Code, on the effective date of the Uniform Trust Code:

(1) the Uniform Trust Code applies to all trusts created before, on or after its effective date;

(2) the Uniform Trust Code applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) the Uniform Trust Code applies to judicial proceedings concerning trusts commenced before its effective date, unless the court finds that application of a particular provision of the Uniform Trust Code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the Uniform Trust Code does not apply and the superseded law applies;

(4) any rule of construction or presumption provided in the Uniform Trust Code applies to trust instruments executed before the effective date of the Uniform Trust Code unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) an act done before the effective date of the Uniform Trust Code is not affected by the Uniform Trust Code.

B. If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the Uniform Trust Code, that statute continues to apply to the right even if it has been repealed or superseded.

C. The Uniform Trust Code does not apply to the trust created by the Enabling Act for New Mexico of June 20, 1910, 36 Stat. 557, Ch. 310.

Section 11-1105. REPEAL.--Sections 45-7-101 through 45-7-104, 45-7-201 through 45-7-401 and 46-2-1 through 46-2-19 NMSA 1978 (being Laws 1975, Chapter 257, Sections 7-101 through 7-104, 7-201 through 7-206, 7-301 through 7-307 and 7-401; Laws 1951, Chapter 193, Sections 1 through 3; Laws 1995, Chapter 190, Section 2; Laws 1951, Chapter 193, Section 5; Laws 1995, Chapter 190, Section 3;

Laws 1951, Chapter 193, Sections 7 through 11 and 15 through 22, as amended) are repealed.

Section 11-1106. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 48

CHAPTER 123

CHAPTER 123, LAWS 2003

AN ACT

RELATING TO BORDER AFFAIRS; AMENDING THE BORDER DEVELOPMENT ACT TO PROVIDE MORE AUTONOMY TO THE BORDER AUTHORITY AND TO CLARIFY THE DUTIES AND AUTHORITY OF THE BORDER AUTHORITY; AMENDING SECTIONS AND REPEALING A SECTION OF THE NMSA 1978.

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

Section 1. Section 58-27-4 NMSA 1978 (being Laws 1991, Chapter 131, Section 4, as amended) is amended to read:

"58-27-4. BORDER AUTHORITY CREATED--MEMBERSHIP.--

A. The "border authority" is created. The authority is a state agency and is administratively attached to the economic development department.

B. The authority consists of seven voting members, six of whom shall be appointed by the governor. No more than three of those appointed shall belong to the same political party. The seventh member shall be the secretary of economic development or the secretary's designee. The voting members appointed by the governor shall be confirmed by the senate. The lieutenant governor shall serve as a nonvoting ex-officio member. The chair may appoint a nonvoting advisory committee to provide advice and recommendations on authority matters.

C. The six voting members of the authority appointed by the governor shall be citizens of the state and shall serve for terms of four years except for the initial appointees who shall be appointed so that the terms are staggered after initial

appointment. Initial appointees shall serve terms as follows: two members for two years, two members for three years and two members for four years."

Section 2. Section 58-27-10 NMSA 1978 (being Laws 1991, Chapter 131, Section 10, as amended) is amended to read:

"58-27-10. POWERS AND DUTIES OF AUTHORITY.--

A. The authority shall:

(1) advise the governor and his staff and the New Mexico finance authority oversight committee on methods, proposals, programs and initiatives involving the New Mexico-Chihuahua border area that may further stimulate the border economy and provide additional employment opportunities for New Mexico citizens;

(2) subject to the provisions of the Border Development Act, initiate, develop, acquire, own, construct and maintain border development projects;

(3) create programs to expand economic opportunities beyond the New Mexico-Chihuahua border area to other areas of the state;

(4) create avenues of communication between New Mexico and Chihuahua and the Republic of Mexico concerning economic development, trade and commerce, transportation and industrial affairs;

(5) promote legislation that will further the goals of the authority and development of the border region;

(6) produce or cause to have produced promotional literature related to explanation and fulfillment of the authority's goals;

(7) actively recruit industries and establish programs that will result in the location and relocation of new industries in the state;

(8) coordinate and expedite the involvement of the executive department's border area efforts; and

(9) perform or cause to be performed environmental, transportation, communication, land use and other technical studies necessary or advisable for projects or programs or to secure port-of-entry approval by the United States and the Mexican governments and other appropriate governmental agencies.

B. The authority may:

(1) solicit and accept federal, state, local and private grants of funds, property or financial or other aid in any form for the purpose of carrying out the provisions of the Border Development Act;

(2) adopt rules governing the manner in which its business is transacted and the manner in which the powers of the authority are exercised and its duties performed;

(3) act as an applicant for and operator of port-of-entry facilities and, as the applicant, carry out all tasks and functions, including acquisition by purchase or gift of any real property necessary for port-of-entry facilities, acquisition by purchase, gift or construction of any facilities or other real or personal property necessary for a port of entry and filing all necessary documents and follow-up of such filings with appropriate agencies;

(4) as part of a port of entry, give or transfer real property, facilities and improvements owned by the authority to the United States government;

(5) acquire by construction, purchase, gift or lease projects that shall be located within the state;

(6) sell, lease or otherwise dispose of a project upon terms and conditions acceptable to the authority and in the best interests of the state;

(7) issue revenue bonds and borrow money for the purpose of defraying the cost of acquiring a project by purchase or construction and to secure the payment of the bonds or repayment of a loan; and

(8) refinance a project.

C. In exercising its authority, the authority shall not:

(1) operate a project as a business or in any manner except as lessor;

(2) incur debt as a general obligation of the state or pledge the full faith and credit of the state to repay debt; or

(3) expend funds or incur debt for the improvement, maintenance, repair or addition to property not owned by the authority."

Section 3. Section 58-27-14 NMSA 1978 (being Laws 1991, Chapter 131, Section 14, as amended) is amended to read:

"58-27-14. AUTHORITY FEES AND CHARGES.--Unless prohibited by law, the authority may fix, alter, charge and collect tolls, fees or rentals and may impose any

other charges for the use of or for services rendered by any authority facility, program or service."

Section 4. Section 58-27-16 NMSA 1978 (being Laws 1991, Chapter 131, Section 16, as amended) is amended to read:

"58-27-16. AUTHORITY REVENUE BONDS--TERMS.--

A. Authority revenue bonds:

(1) may have interest, appreciated principal value or any part thereof payable at intervals determined by the authority;

(2) may be subject to prior redemption or mandatory redemption at the authority's option at the time and upon the terms and conditions with or without the payment of a premium as may be provided by resolution of the authority;

(3) may mature at any time not exceeding thirty years after the date of issuance;

(4) may be serial in form and maturity or may consist of one or more bonds payable at one time or in installments or may be in such other form as determined by the authority;

(5) may be in registered or bearer form or in book entry form through the facilities of a securities depository either as to principal or interest or both;

(6) shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that conforms to the Public Securities Act; and

(7) may be sold at public or negotiated sale.

B. Subject to the approval of the state board of finance, the authority may enter into other financial arrangements if it determines that the arrangements will assist the authority."

Section 5. Section 58-27-16.1 NMSA 1978 (being Laws 1993, Chapter 335, Section 4, as amended) is amended to read:

"58-27-16.1. AUTHORITY LOANS--TERMS.--If the authority borrows money from a financial institution or other entity:

A. the interest, principal payments or any part thereof shall be payable at intervals as may be determined by the authority;

B. the loan shall mature at any time not exceeding thirty years from the date of origination;

C. the principal amount of the loan shall not exceed the fair market value of the real or personal property to be acquired with the proceeds of the loan as evidenced by a certified appraisal in accordance with the Real Estate Appraisers Act; and

D. the loan shall be subject to the approval of the state board of finance."

Section 6. Section 58-27-19 NMSA 1978 (being Laws 1991, Chapter 131, Section 19, as amended) is amended to read:

"58-27-19. REQUIREMENTS RESPECTING RESOLUTION AND

LEASE.--

A. Prior to approving a resolution for the issuance of bonds or the closing of a loan for any project, the authority shall determine and find the following in the resolution approving the issuance of the bonds or the closing of the loan:

(1) if the resolution is for the issuance of bonds, the principal and interest of the bonds to be issued shall be fully secured by a lease agreement or installment sale agreement executed by an agency of the United States government, by a state or local public agency or institution, by a corporation organized and operating within the United States, that corporation or the long-term debt of that corporation being rated not less than "A" by a national rating service, or by an irrevocable letter of credit issued by a chartered financial institution approved for this purpose by the state board of finance or by a bond insurance policy issued by an insurance company rated not less than "AA" by a national rating service;

(2) the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued or the loan proposed to be obtained to finance the project; and

(3) the amount necessary to be paid each year into any reserve funds that the governing body may deem advisable to establish in connection with the retirement of the proposed bonds or the repayment of the loan and, in either case, the maintenance of the project. Unless the terms under which the project is to be leased or sold provide that the lessee or purchaser shall maintain the project and carry all proper insurance with respect to the project, the resolution shall set forth the estimated cost of maintaining the project in good repair and keeping it properly insured.

B. If the resolution is for the issuance of bonds, the determinations and findings of the authority required to be made by this section shall be set forth in the proceedings under which the proposed bonds are to be issued.

C. Prior to the issuance of the bonds or the closing of the loan, the authority may lease or sell the project to a lessee or purchaser under an agreement conditioned upon completion of the project and providing for payment to the authority of such rentals or payments as, upon the basis of determinations and findings pursuant to provisions of Subsection A of this section, will be sufficient to:

(1) pay the principal of and interest on the bonds issued or on the loan to be obtained to finance the project;

(2) build up and maintain any reserve deemed by the authority to be advisable in connection with the financing of the project; and

(3) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the project.

D. With prior approval of the state board of finance, the authority may borrow funds to purchase, lease, acquire or develop water rights, a water system or a wastewater collection and treatment system, provided the authority does not obligate itself or the state to any debt or obligation that cannot be paid from revenues derived from the project.

E. Upon prior approval of the state board of finance, the authority may obtain a commitment from a financial institution to borrow money; provided that closing of the loan and disbursement of the proceeds is conditional upon compliance with the requirements of the Border Development Act. Nothing in this section shall be deemed to authorize the authority to incur any debt obligation of the authority in connection with a loan commitment prior to the closing of the loan."

Section 7. REPEAL.--Section 58-27-11 NMSA 1978 (being Laws 1991, Chapter 131, Section 11, as amended) is repealed.

HOUSE GOVERNMENT AND URBAN AFFAIRS

COMMITTEE SUBSTITUTE

FOR HOUSE BILL 533

CHAPTER 124

CHAPTER 124, LAWS 2003

AN ACT

RELATING TO WILDLIFE; ALLOWING FOR THE DESIGNATION OF AREAS IN WHICH BEAR-PROOF GARBAGE CONTAINERS ARE REQUIRED.

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

Section 1. Section 17-1-14 NMSA 1978 (being Laws 1921, Chapter 35, Section 7, as amended) is amended to read:

"17-1-14. GENERAL POWERS AND DUTIES OF STATE GAME COMMISSION--
-GAME PROTECTION FUND.--

A. The state game commission shall have general control over the collection and disbursement of all money collected or received under the state laws for the protection and propagation of game and fish, which money shall be paid over to the state treasurer to the credit of the game protection fund, and the fund, including all earned income therefrom, shall not be transferred to another fund. Chapter 17 NMSA 1978 shall be guaranty to the person who pays for hunting and fishing licenses and permits that the money in that fund shall not be used for any purpose other than as provided in Chapter 17 NMSA 1978.

B. The state game commission shall have authority to:

(1) establish and, through the director of the department of game and fish, to operate fish hatcheries for the purpose of stocking public waters of the state and to furnish fish fry and fingerlings to stock private waters, receipts from such sources to go into the game protection fund;

(2) declare closed seasons in any specified locality and on any species of game or fish threatened with undue depletion from any cause;

(3) establish game refuges for the purpose of providing safe sanctuaries in which game may breed and replenish adjacent hunting ranges, it being the purpose of this provision to establish small refuges rather than large preserves or to close large areas to hunting;

(4) purchase lands for game refuges where suitable public lands do not exist, to purchase lands for fish hatcheries and to purchase lands to be maintained perpetually as public hunting grounds, particularly lands suitable for waterfowl hunting, all such lands to be paid for from the game protection fund;

(5) receive by gift or bequest, in the name and on behalf of the state, lands suitable for game refuges, hunting grounds, fish hatcheries or for any other purpose necessary to carry out the provisions of Chapter 17 NMSA 1978;

(6) apply for and accept any state, federal or private funds, grants or donations from any source for game and fish programs and projects;

(7) designate certain areas as rest grounds for migratory birds, in which hunting shall be forbidden at all times or at such times as the state game commission shall provide, it being the purpose of this provision not to interfere unduly with the hunting of waterfowl but to provide havens in which they can rest and feed without molestation;

(8) close any public stream or lake or portion thereof to fishing when such action is necessary to protect a recently stocked water, to protect spawning waters or to prevent undue depletion of the fish;

(9) propagate, capture, purchase, transport or sell any species of game or fish needed for restocking any lands or streams of the state;

(10) after reasonable notice and hearing, suspend or revoke any license or permit issued pursuant to the provisions of Chapter 17 NMSA 1978 and withhold license privileges for a definite period not to exceed three years from any person procuring a license through misrepresentation, violating any provisions of Chapter 17 NMSA 1978 or hunting without a proper license;

(11) adopt rules establishing procedures that provide reasonable notice and a hearing before the state game commission for the suspension, revocation or withholding of license privileges of a person charged with violating the provisions of Chapter 17 NMSA 1978, subject to such judicial review as may be provided by law;

(12) conduct studies of programs for the management of endangered and nongame species of wildlife;

(13) establish licenses, permits and certificates not otherwise provided for in Section 17-3-13 NMSA 1978 and charge and collect just and reasonable fees for them; provided the fees shall not exceed the costs of administration associated with the licenses, permits or certificates;

(14) permit, regulate or prohibit the commercial taking or capturing of native, free-ranging amphibians or reptiles not specifically protected by law, except for rattlesnake roundups, collection of fish bait and lizard races;

(15) adopt rules to control, eradicate or prevent the spread of a contagious disease, pest or parasite, including chronic wasting disease, to or among game animals. The rules shall include provisions for:

(a) notification to the department of game and fish of the diagnosis or suspected presence of a contagious disease;

(b) examination by the state veterinarian or his designee of suspected infected game animals;

(c) quarantine, treatment or destruction of an infected game animal;

(d) disinfection and isolation of a licensed private park where an infected game animal has been; and

(e) indemnification and destruction of a protected game animal; and

(16) as necessary, designate areas of the state in which bear-proof garbage containers are required on public and private lands to reduce potential human-bear interactions.

C. The director of the department of game and fish shall exercise all the powers and duties conferred upon the state game and fish warden by all previous statutes now in force not in conflict with Chapter 17 NMSA 1978.

D. The state game commission shall have authority to prohibit all hunting in periods of extreme forest fire danger, at such times and places as may be necessary to reduce the danger of destructive forest fires.

E. The hunting, pursuing, capturing, killing or wounding of any game animals, birds or fish in or upon any game refuge, rest ground or closed water or closed area or during any closed season established or proclaimed by the state game commission in accordance with the authority conferred in Chapter 17 NMSA 1978 constitutes a misdemeanor and shall be punishable as prescribed in Chapter 17 NMSA 1978."

HOUSE BILL 560

CHAPTER 125

CHAPTER 125, LAWS 2003

AN ACT

RELATING TO TAXATION; AMENDING THE GROSS RECEIPTS AND COMPENSATING TAX ACT; CLARIFYING THE MEANING OF FACILITIES OPEN TO THE GENERAL PUBLIC.

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

Section 1. Section 7-9-3.2 NMSA 1978 (being Laws 1991, Chapter 8, Section 1, as amended) is amended to read:

"7-9-3.2. ADDITIONAL DEFINITION.--

A. As used in the Gross Receipts and Compensating Tax Act, "governmental gross receipts" means all receipts of the state or any agency, institution, instrumentality or political subdivision thereof from:

(1) the sale of tangible personal property other than water from facilities open to the general public;

(2) the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public;

(3) refuse collection, refuse disposal or both;

(4) sewage services; and

(5) the sale of water by a utility owned or operated by a county, municipality or other political subdivision of the state.

"Governmental gross receipts" includes receipts from the sale of tangible personal property handled on consignment when sold from facilities open to the general public but excludes cash discounts taken and allowed, governmental gross receipts tax payable on transactions reportable for the period and any type of time-price differential.

B. As used in this section, "facilities open to the general public" does not include point of sale registers or electronic devices at a bookstore owned or operated by a public post-secondary educational institution when the registers or devices are utilized in the sale of textbooks or other materials required for courses at the institution to a student enrolled at the institution who displays a valid student identification card."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 886

CHAPTER 126

CHAPTER 126, LAWS 2003

AN ACT

RELATING TO FORT STANTON; CREATING THE FORT STANTON DEVELOPMENT COMMISSION; PROVIDING FOR DUTIES AND POWERS; CREATING THE FORT STANTON DEVELOPMENT FUND.

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

**Section 1. FORT STANTON DEVELOPMENT COMMISSION--
CREATED.--**

A. There is created the "Fort Stanton development commission", which shall be administratively attached to the office of cultural affairs.

B. The commission shall consist of seven members selected as follows:

(1) the chair of the Lincoln county commission or the designee of the chair;

(2) the mayor of the village of Ruidoso or the designee of the mayor;

(3) the secretary of energy, minerals and natural resources or the designee of the secretary;

(4) the state historic preservation officer or the designee of the officer; and

(5) three members at large who are residents of Lincoln county and are appointed by the governor.

C. The chairman of the commission shall be elected annually from among the commission membership.

D. Appointed members shall serve for terms of six years each but the initial appointment shall be for two, four and six years to accomplish staggered terms. Vacancies in an appointed member's seat shall be filled for the remainder of the unexpired term in the same manner as the original appointment was made.

E. Appointed members shall receive no compensation but may be paid per diem and mileage as provided for nonsalaried officers in the Per Diem and Mileage Act.

Section 2. DUTIES AND POWERS.--

A. The Fort Stanton development commission shall:

(1) plan, assemble, dispose of and acquire furnishings, art, landscaping materials and plants and other decorations for the public areas of Fort Stanton;

(2) monitor and report on the status of maintenance of Fort Stanton and recommend to the legislature actions necessary to repair, maintain and renovate the grounds and improvements; and

(3) develop statewide interest in Fort Stanton and develop a comprehensive plan for the most appropriate and beneficial use of Fort Stanton.

B. The commission may:

(1) utilize the assistance of individuals, the office of cultural affairs, other state agencies and nonprofit charitable corporations in carrying out its duties;

(2) accept on behalf of the state from any private or other public sources money, gifts, donations and bequests for use by the commission in carrying out its duties; and

(3) enter into public promotions of its endeavors and publish such materials as it deems appropriate to promote the purposes of the commission.

Section 3. TRUST FUND CREATED.--The "Fort Stanton development fund" is created in the state treasury. The fund shall consist of all gifts, donations and bequests of money to the Fort Stanton development commission as well as any appropriations made to the commission. Earnings from the investment of the fund shall be credited to the fund. Expenditure from the fund shall be made only for the purposes for which the commission was created pursuant to vouchers signed by the chairman of the commission on warrants issued by the secretary of finance and administration.

HOUSE BILL 926, AS AMENDED

CHAPTER 127

CHAPTER 127, LAWS 2003

AN ACT

RELATING TO TAXATION; CLARIFYING AND CONFORMING TAX INCENTIVES FOR THE FILM INDUSTRY; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-2F-1 NMSA 1978 (being Laws 2002, Chapter 36, Section 1) is amended to read:

"7-2F-1. FILM PRODUCTION TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, a tax credit in an amount equal to fifteen percent of direct production expenditures made in New Mexico that are directly attributable to the production in New Mexico of a film and that are subject to taxation by the state of New Mexico.

B. The film production tax credit shall not be claimed with respect to expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

C. A long-form narrative film production for which the film production tax credit is claimed shall contain an acknowledgment that the production was filmed in New Mexico.

D. To be eligible for the film production tax credit, a film production company shall submit to the New Mexico film division of the economic development department information required by the division to demonstrate conformity with the requirements of this section. The division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon.

E. To receive a film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film production tax credit. If the requirements of this section have been complied with, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

F. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film production tax credit claimed exceeds the film

production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded."

Section 2. A new Section 7-2F-2 NMSA 1978 is enacted to read:

"7-2F-2. DEFINITIONS.--As used in Chapter 7, Article 2F NMSA 1978:

A. "direct production expenditure" means a transaction that is subject to taxation in New Mexico, including:

(1) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident for purposes of the Income Tax Act;

(2) payment to a personal services corporation for the services of a performing artist, if:

(a) the personal services corporation pays gross receipts tax in New Mexico on those payments; or

(b) the performing artist receiving payments from the personal services corporation pays New Mexico income tax; and

(3) any of the following provided by a vendor:

(a) the story and scenario to be used for a film;

(b) set construction and operations, wardrobe, accessories and related services;

(c) photography, sound synchronization, lighting and related services;

(d) editing and related services;

(e) rental of facilities and equipment;

(f) leasing of vehicles;

(g) food or lodging;

(h) airfare if purchased through a New Mexico-based travel agency or travel company;

(i) insurance coverage and bonding if purchased through a New Mexico-based insurance agent; and

(j) other direct costs of producing a film in accordance with generally accepted entertainment industry practice;

B. "film" means a single media or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

(1) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(2) can be viewed or reproduced;

(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(4) is intended for reasonable commercial exploitation for the delivery medium used; and

C. "film production company" means a person that produces one or more films."

Section 3. Section 7-9-86 NMSA 1978 (being Laws 1995, Chapter 80, Section 1) is amended to read:

"7-9-86. DEDUCTION--GROSS RECEIPTS TAX--SALES TO QUALIFIED FILM PRODUCTION COMPANY.--

A. Receipts from selling or leasing property and from performing services may be deducted from gross receipts or from governmental gross receipts if the sale, lease or performance is made to a qualified production company that delivers a nontaxable transaction certificate to the seller, lessor or performer.

B. For the purposes of this section:

(1) "film" means a single media or multimedia program, including an advertising message, that:

(a) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(b) can be viewed or reproduced;

(c) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(d) is intended for reasonable commercial exploitation for the delivery medium used;

(2) "production company" means a person that produces one or more films for exhibition in theaters, on television or elsewhere;

(3) "production costs" means the costs of the following:

(a) a story and scenario to be used for a film;

(b) salaries of talent, management and labor, including payments to personal services corporations for the services of a performing artist;

(c) set construction and operations, wardrobe, accessories and related services;

(d) photography, sound synchronization, lighting and related services;

(e) editing and related services;

(f) rental of facilities and equipment; or

(g) other direct costs of producing the film in accordance with generally accepted entertainment industry practice; and

(4) "qualified production company" means a production company that meets the provisions of this section and has registered or will register with the New Mexico film division of the economic development department.

C. A qualified production company may deliver the nontaxable transaction certificates authorized by this section only with respect to production costs."

Section 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.

Section 5. APPLICABILITY.--The provisions of Section 1 of this act apply to films produced in New Mexico on or after January 1, 2003.

Section 6. EFFECTIVE DATE.--The effective date of the provisions of Section 3 of this act is July 1, 2003.

HOUSE BILL 295, AS AMENDED

CHAPTER 128

CHAPTER 128, LAWS 2003

AN ACT

RELATING TO ELECTIONS; REDUCING THE ELECTION WAITING PERIOD IN CERTAIN ARROYO FLOOD CONTROL AUTHORITIES.

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

Section 1. Section 72-19-29 NMSA 1978 (being Laws 1990, Chapter 14, Section 29) is amended to read:

"72-19-29. ELECTION RESOLUTION.--The board shall call any election by resolution adopted at least fifty days prior to the election. The resolution shall recite the objects and purposes of the election and the date upon which the election shall be held."

HOUSE BILL 368

CHAPTER 129

CHAPTER 129, LAWS 2003

AN ACT

RELATING TO ENERGY; PROVIDING FOR A RENEWABLE ENERGY AND FUEL CELL DEMONSTRATION PROJECT FOR ON-SITE ELECTRIC GENERATION.

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

Section 1. RENEWABLE ENERGY AND FUEL CELL DEMONSTRATION PROJECT--SECRETARY OF ENERGY, MINERALS AND NATURAL RESOURCES--DUTIES.--The secretary of energy, minerals and natural resources shall conduct a practical demonstration of a grid-interconnected, real-time, net-metered, solar photovoltaic system and an ultra-high-efficiency co-generation fuel cell system powered by natural gas, propane,

methanol or hydrogen to generate on-site electricity for government or public use. The solar photovoltaic electric generating system shall be sized and configured to comply with the federal energy management program's million solar roofs initiative. All demonstrations shall be accessible to the public. The secretary shall conduct an analysis that considers life-cycle costing of the new technologies, their appropriate uses and an evaluation of the economic and environmental benefits that might be derived from statewide introduction and application of the technology. The analysis shall also include price differentials of on-peak and off-peak electricity. Life-cycle costing shall be determined by computing the savings derived from the operation of the technology over its useful life, less purchase and operating costs. The goal of the project is to demonstrate a new generation of electric and fossil fuel technologies while providing an opportunity to evaluate their potential economic and environmental benefits. The secretary shall submit the results of the evaluations and recommendations to the second session of the forty-seventh legislature.

HOUSE BILL 172, AS AMENDED

CHAPTER 130

CHAPTER 130, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOLS; CREATING A THREE-YEAR KINDERGARTEN PLUS PILOT PROJECT TO STUDY THE EFFICACY OF EXTENDED KINDERGARTEN FOR DISADVANTAGED STUDENTS; ASSESSING THE EFFECT OF KINDERGARTEN PLUS ON THE LITERACY, NUMERACY AND COGNITIVE AND SOCIAL SKILLS DEVELOPMENT OF PARTICIPANTS; PROVIDING FOR PILOT PROJECT ELIGIBILITY, PARTICIPATION CRITERIA AND EVALUATION; CREATING A FUND FOR PUBLIC AND PRIVATE GRANTS AND DONATIONS TO THE PILOT PROJECT.

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

Section 1. A new section of the Public School Code is enacted to read:

"KINDERGARTEN PLUS--PILOT PROJECT--ELIGIBILITY--APPLICATION--REPORTING AND EVACUATION--CREATING A FUND.--

A. The "kindergarten plus" pilot project is created as a three-year study that extends the kindergarten year by four months for participating students and measures the effect of additional time on literacy, numeracy and social skills development. The purpose of kindergarten plus is to demonstrate that increased time in kindergarten narrows the achievement gap between disadvantaged students and other students and increases cognitive skills and leads to higher test scores for all participants.

B. The pilot project shall be administered by the department of education and shall provide the funding for approved full-day kindergarten programs to be extended by forty instructional days, beginning approximately two months earlier and ending approximately two months later than other classes. For the first year, the pilot project shall begin July 1 and run two hundred twenty instructional days; in the second and third years, kindergarten plus may begin or end at any time that provides for the same number of instructional days.

C. Kindergarten plus shall be conducted in the Albuquerque, Gallup-McKinley, Gadsden and Las Cruces school districts. Full-day kindergarten programs in high-poverty public schools in those school districts are eligible to apply for kindergarten plus. For the purposes of kindergarten plus, "high-poverty school" means a public school in which eighty-five percent or more of the students are eligible for free or reduced lunch. If enough eligible high-poverty schools in those school districts do not qualify for the pilot project for the amount of funding available, the department of education may extend eligibility to high-poverty schools in other school districts.

D. The department of education shall determine application requirements and procedures and criteria for evaluating applications. An applicant must demonstrate that its kindergarten plus program will meet all state board standards and employ only qualified teachers and other staff. The department shall provide additional professional development for kindergarten plus teachers in how young children learn to read. Teachers shall be paid at the same rate and under the same terms for kindergarten plus as teachers are paid for regular full-day kindergarten programs.

E. Students participating in kindergarten plus shall be evaluated at the beginning of kindergarten plus and their progress in literacy, numeracy and cognitive and social skills shall be measured through standardized assessments in kindergarten and in first grade. The department of education shall provide additional professional development for kindergarten plus teachers in how young children learn to read.

F. The department of education shall establish reporting and evaluation requirements for participating schools, including student and program assessments. The department shall provide interim and final reports annually to the legislature and the governor on the efficacy of the pilot project.

G. In addition to legislative appropriations for the pilot project, the department of education shall seek public and private grants and donations. Grants and donations shall be deposited in the "kindergarten plus fund" created in the state treasury. Income from investment of the fund shall be deposited in the fund. The department shall administer the fund and money in the fund is appropriated to the department to carry out the purposes of the pilot project. Money shall be expended in accordance with the terms of the grants and donations. Unless otherwise specified by the terms of a grant or donation, money in the fund at the end of the pilot project shall revert to the general fund. Expenditures from the fund shall be by warrants of the secretary of finance and administration drawn pursuant to vouchers signed by the state superintendent or his authorized representative."

HOUSE BILL 61, AS AMENDED

CHAPTER 131

CHAPTER 131, LAWS 2003

AN ACT

RELATING TO WATER; PROVIDING FOR A COMPREHENSIVE STATE WATER PLAN.

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

Section 1. A new section of Chapter 72, Article 14 NMSA 1978 is enacted to read:

"STATE WATER PLAN--PURPOSE--CONTENTS.--

A. It is the intent of the legislature that the interstate stream commission, in collaboration with the office of the state engineer and the water trust board, prepare and implement a comprehensive state water plan.

B. The state water plan shall be a strategic management tool for the purposes of:

(1) promoting stewardship of the state's water resources;

- (2) protecting and maintaining water rights and their priority status;
- (3) protecting the diverse customs, culture, environment and economic stability of the state;
- (4) protecting both the water supply and water quality;
- (5) promoting cooperative strategies, based on concern for meeting the basic needs of all New Mexicans;
- (6) meeting the state's interstate compact obligations;
- (7) providing a basis for prioritizing infrastructure investment; and
- (8) providing statewide continuity of policy and management relative to our water resources.

C. The interstate stream commission in collaboration with the office of the state engineer, and in consultation with other government agencies as appropriate, shall develop a comprehensive, coordinated state water plan that shall:

- (1) identify and reflect the common priorities, goals and objectives that will have a positive impact on the public welfare of the state;
- (2) establish a clear vision and policy direction for active management of the state's waters;
- (3) include an inventory of the quantity and quality of the state's water resources, population projections and other water resource demands under a range of conditions;
- (4) include water budgets for the state and for all major river basins and aquifer systems in the state;
- (5) develop water conservation strategies and policies to maximize beneficial use, including reuse and recycling by conjunctive management of water resources and by doing so to promote nonforfeiture of water rights;
- (6) include a drought management plan designed to address drought emergencies, promote strategies for prevention of drought-related emergencies in the future and coordinate drought planning statewide;
- (7) recognize the relationship between water availability and land-use decisions;

(8) promote river riparian and watershed restoration that focuses on protecting the water supply, improving water quality and complying with federal Endangered Species Act of 1973 mandates;

(9) consider water rights transfer policies that balance the need to protect the customs, culture, environment and economic health and stability of the state's diverse communities while providing for timely and efficient transfers of water between uses to meet both short-term shortages and long-term economic development needs;

(10) promote strategies and mechanisms for achieving coordination with all levels of government;

(11) integrate regional water plans into the state water plan as appropriate and consistent with state water plan policies and strategies;

(12) integrate plans of water supply purveyors, including those of local governments, privately owned public utilities, associations, cooperatives, irrigation districts and acequias as appropriate and consistent with state water plan policies and strategies, as those plans are completed and submitted to the office of the state engineer;

(13) identify water-related infrastructure and management investment needs and opportunities to leverage federal and other funding; and

(14) promote collaboration with and strategic focusing of the research and development of the state's national laboratories and research institutions to address the state's water challenges and to bring to the state demonstration projects in desalination, conservation, watershed restoration, weather modification and other technological approaches to enhancing water supply and management.

D. Recognizing that complete water rights adjudication, measurement, well inventories and adequate databases are essential elements of an effective water management plan, and further recognizing that completion of these work elements will require substantial time and resources until such time as these elements are complete, the state water plan shall include work plans and strategies for:

(1) completion of water rights adjudications, with required supporting documentation, including hydrographic surveys, aquifer mapping and aerial mapping of irrigated land;

(2) creation and completion of a comprehensive database and an electronically accessible information system on the state's water resources and water rights, including file abstraction and imaging of paper files as well as information on pending adjudications;

(3) measuring of surface and ground water uses in the state as necessary for management of the state's water resources; and

(4) taking inventory of existing water wells and determining appropriate disposition of unused wells.

E. The interstate stream commission and the office of the state engineer shall consult directly with the governments of Indian nations, tribes and pueblos to formulate a statement of policy and process to guide:

(1) coordination or integration of the water plans of Indian nations, tribes and pueblos located wholly or partially within New Mexico with the state water plan; and

(2) final adjudication or settlement of all water rights claims by Indian nations, tribes and pueblos located wholly or partially within New Mexico.

F. The interstate stream commission shall ensure that public participation and public input are integrated throughout the planning process. The interstate stream commission shall convene water planners and stakeholders from diverse constituencies to advise it and the office of the state engineer on the state water plan, including statewide policies, priorities, goals and objectives for the plan, issues of statewide concern and strategies for implementation of the plan. The interstate stream commission shall also ensure that representatives of the stakeholder groups affected by various plan components will participate in the development of those plan components. Members of the interstate stream commission and water trust board shall be notified of and are welcome to participate in all aspects of the planning process.

G. After public review and comment, the state water plan developed in conformance with this section is subject to adoption by the interstate stream commission. Following its adoption, the state water plan shall be presented to the interim legislative committee that studies water and natural resources.

H. The state water plan shall be periodically reviewed, updated and amended in response to changing conditions. At a minimum a review shall be undertaken every five years.

I. Nothing in the state water plan shall be construed to permit the granting or the condemnation of water rights.

J. Nothing in the state water plan shall be construed to determine, abridge or affect the water rights of Indian nations, tribes or pueblos."

Section 2. A new section of the Water Project Finance Act is enacted to read:

"IMPLEMENTATION OF STATE WATER PLAN.--

A. The board, in conformance with the state water plan and pursuant to the provisions of the Water Project Finance Act, shall prioritize the planning and financing of water projects required to implement the plan.

B. The board shall identify opportunities to leverage federal and other funding.

C. The board shall utilize the resources of its member agencies and entities whenever possible in implementing the state water plan."

HOUSE AGRICULTURE AND WATER

RESOURCES COMMITTEE SUBSTITUTE

FOR HOUSE BILL 260, AS AMENDED

CHAPTER 132

CHAPTER 132, LAWS 2003

AN ACT

RELATING TO WATER; PROVIDING WATER BANKING AUTHORITY TO ACEQUIAS AND COMMUNITY DITCHES.

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

Section 1. WATER BANKING--ACEQUIAS AND COMMUNITY DITCHES.--An acequia or community ditch may establish a water bank for the purpose of temporarily reallocating water without change of purpose of use or point of diversion to augment the water supplies available for the places of use served by the acequia or community ditch. The acequia or community ditch water bank may make temporary transfers of place of use without formal proceedings before the state engineer, and water rights placed in the acequia or community ditch water bank shall not be subject to loss for non-use during the period the rights are placed in the water bank. An acequia or community ditch water bank established

pursuant to this section is not subject to recognition or approval by the interstate stream commission or the state engineer.

Section 2. Section 72-1-2.3 NMSA 1978 (being Laws 2002, Chapter 77, Section 1) is amended to read:

"72-1-2.3. LOWER PECOS RIVER BASIN BELOW SUMNER LAKE WATER BANK--ACEQUIA AND COMMUNITY DITCH WATER BANKS--INTERSTATE STREAM COMMISSION.--

A. The interstate stream commission may recognize a water bank established by an irrigation district, a conservancy district, an artesian conservancy district, a community ditch, an acequia or a water users association in the lower Pecos river basin below Sumner lake for purposes of compliance with the Pecos River Compact.

B. The interstate stream commission shall propose and recommend to the state engineer for adoption rules for recognition of a water bank that include:

(1) criteria, terms and conditions for deposit of a water right in the bank;

(2) terms and conditions for the accrual, pooling, exchange, assignment and conditions of the deposit of a water right;

(3) procedures for recording and annual reporting of all transactions to the interstate stream commission and the state engineer; and

(4) procedures for the water bank to temporarily transfer deposited water to new purposes and places of use and points of diversion without formal proceedings before the state engineer.

C. A lower Pecos river basin below Sumner lake water bank may contract with a person to accrue, pool, exchange, assign or lease water rights to facilitate compliance with the Pecos River Compact. A transaction and transfer of water by a water bank in the Pecos river basin shall:

(1) not impair other water rights;

(2) not deplete water in the system above that level that would have occurred in the absence of the transaction;

(3) comply with state law; and

(4) be within the same stream system or underground water source."

Section 3. Section 72-1-2.3 NMSA 1978 (being Laws 2002, Chapter 77, Section 1, as amended) is repealed effective December 31, 2005.

HOUSE BILL 302

CHAPTER 133

CHAPTER 133, LAWS 2003

AN ACT

RELATING TO NATURAL RESOURCES; PROVIDING FOR WATERSHED RESTORATION.

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

Section 1. SECRETARY OF ENERGY, MINERALS AND NATURAL RESOURCES--ADDITIONAL DUTIES.--The secretary of energy, minerals and natural resources shall develop a comprehensive watershed restoration strategy that sets guidelines for coordination with state and federal land management agencies and political subdivisions, including the soil and water conservation districts and other stakeholders. The strategy shall focus on removing the overabundance of woody vegetation, particularly non-native species of phreatophytes, that consume excessive amounts of water and on reestablishing the natural ecology of New Mexico. The strategy shall use:

- A. incentives to encourage the formation of businesses to clear vegetation;
 - B. incentives to encourage biomass energy use; and
 - C. the use of inmates from the corrections department to assist with watershed cleanup.
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CHAPTER 134

CHAPTER 134, LAWS 2003

AN ACT

RELATING TO WATER PROJECTS; REQUIRING A PERCENTAGE OF ANNUAL SEVERANCE TAX BONDING CAPACITY TO BE USED TO FUND WATER PROJECTS STATEWIDE; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Severance Tax Bonding Act is enacted to read:

"BONDING CAPACITY--AUTHORIZATION FOR SEVERANCE TAX BONDS--WATER PROJECTS PRIORITY.--

A. By January 15 of each year, the board of finance division of the department of finance and administration shall estimate the amount of bonding capacity available for severance tax bonds to be authorized by the legislature. The division shall authorize ten percent of the estimated bonding capacity each year, and the legislature authorizes the state board of finance to issue severance tax bonds in the annually deducted amount for use by the water trust board to fund water projects statewide.

B. The water trust board shall certify to the state board of finance the need for issuance of bonds for water projects. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in Subsection A of this section. If necessary, the state board of finance shall take the appropriate steps to comply with the federal Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated to the water project fund in the New Mexico finance authority for the purposes certified by the water trust board to the state board of finance.

C. Money from the severance tax bonds provided for in this section shall not be used to pay indirect project costs. Any unexpended balance from proceeds of severance tax bonds issued for a water project shall revert to the severance tax bonding fund within six months of completion of the water project. The New Mexico finance authority shall monitor and ensure proper reversions.

D. As used in this section, "water project" means a capital outlay project for:

- (1) the storage, conveyance or delivery of water to end users;
- (2) the implementation of federal Endangered Species Act of 1973 collaborative programs;
- (3) the restoration and management of watersheds;
- (4) flood prevention; or
- (5) conservation, recycling, treatment or reuse of water."

HOUSE BILL 882, AS AMENDED

CHAPTER 135

CHAPTER 135, LAWS 2003

AN ACT

RELATING TO WATER; PROVIDING FOR COMPLIANCE WITH AN ACEQUIA OR COMMUNITY DITCH REQUIREMENT FOR A CHANGE IN POINT OF DIVERSION OR PLACE OR PURPOSE OF USE OF A WATER RIGHT.

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

Section 1. A new section of Chapter 72, Article 5 NMSA 1978 is enacted to read:

"ACEQUIAS AND COMMUNITY DITCHES--CHANGES IN POINT OF DIVERSION OR PLACE OR PURPOSE OF USE.--

A. The state engineer shall not approve an application for a change, including an emergency change, in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch if the applicant has not complied with the applicable requirement adopted by an acequia or community ditch pursuant to Subsection E of Section 73-2-21 or Section 73-3-4.1 NMSA 1978.

B. The applicant for a change described in Subsection A of this section shall submit with the application to the state engineer documentary evidence provided by the commissioners of the acequia or community ditch of the applicant's compliance with any applicable requirement for the change adopted by the acequia or community ditch pursuant to Subsection E of Section 73-2-21 or Section 73-3-4.1 NMSA 1978.

C. If an acequia or community ditch has not adopted an applicable requirement, the applicant shall submit to the state engineer along with the application an affidavit provided by the commissioners of the acequia or community ditch stating this fact.

D. If an acequia fails to make a decision within one hundred twenty days in response to an applicant's request for approval pursuant to a applicable requirement, the acequia or community ditch shall be deemed to have approved the applicant's request for approval and the state engineer shall proceed on the application as if the applicant had complied with any applicable acequia or community ditch requirement. The applicant's request shall be in writing and delivered by certified mail to the commissioners of the acequia or community ditch.

E. The provisions of this section do not apply to water rights or lands owned by or reserved for an Indian pueblo."

Section 2. Section 73-2-21 NMSA 1978 (being Laws 1895, Chapter 1, Section 4, as amended) is amended to read:

"73-2-21. COMMISSIONERS' POWERS AND DUTIES--MAYORDOMO'S DUTIES.--

A. The commissioners shall:

(1) assess fatigue work or tasks of all parties owning water rights in such community ditches or acequias;

(2) have power to contract and be contracted with;

(3) make all necessary assessments to provide funds for the payment of the salary of the mayordomo and other legitimate expenses incident to the proper conduct and maintenance of the acequias under their charge;

(4) make contracts for obtaining water for irrigation purposes in connection with their ditches, such contracts to be ratified by a vote of a majority of the owners of water rights in the ditches;

(5) have general charge and control of all affairs pertaining to the same, together with the power to receive money in lieu of such fatigue or task work at a price to be fixed by them; and

(6) immediately upon taking office, provide bylaws, rules and regulations not in conflict with the laws of the state for the government of the ditch or acequia, a printed copy of which shall be furnished to each owner of a water right in such ditch.

B. The mayordomo or superintendent shall, under the direction of the commissioners, be the executive officer of the ditch and shall:

(1) have the superintendence of all work thereon, the distribution of the waters thereof and the collection of fines, if any, and of amounts to be paid in lieu of fatigue or task work;

(2) perform such other duties in connection with the ditch as may be prescribed by the rules and regulations of the same or as may be directed by the commissioners; and

(3) make full written reports of all money received, expended and how expended, and of all activities performed as such officer to the commissioners of the ditch, semiannually, on the first Monday in June and the last Monday in September; provided, further, that the mayordomo shall make such further reports as may be required by the ditch commissioners.

C. The treasurer of the ditch commissioners shall make reports to the ditch commissioners of the money received, expended and how expended, and kept in the custody of the treasurer, and of all activities performed as such officer as are herein required of the mayordomo.

D. The commissioners shall receive and pass upon the reports of the mayordomo and the treasurer provided for in this section before their term of office expires. If the reports are found to be true and correct, they shall approve them; otherwise they shall reject them, respectively. All proceedings of the commissioners relating to all subjects whatsoever shall be reduced to writing in a book or books kept for that purpose, and all books and papers so kept by the commissioners and all reports made, filed or kept as herein required shall always be and remain public property, and shall be subject to the inspection of all persons therein concerned.

E. Pursuant to the rules or bylaws duly adopted by its members, an acequia or community ditch may require that a change in point of diversion or place or purpose of use of a water right served by the acequia or community ditch, or a change in a water right so that it is moved into and then served by the acequia or community ditch, shall be subject to approval by the commissioners of the acequia or community ditch. The change may be denied only if the commissioners determine that it would be detrimental to the acequia or community ditch or its members. The commissioners shall render a written decision explaining the reasons for the decision. If the person proposing the change or a member of the acequia or community ditch is aggrieved by the decision of the commissioners, he may appeal the decision in the district court of the county in which the acequia or community ditch is located within thirty days of the date of the decision. The court may set aside, reverse or remand the decision if it determines that the commissioners acted fraudulently, arbitrarily or capriciously, or that they did not act in accordance with law."

Section 3. A new Section 73-3-4.1 NMSA 1978 is enacted to read:

"73-3-4.1. COMMISSIONERS--ADDITIONAL DUTIES--APPROVAL OF CHANGES IN PLACE OR PURPOSE OF USE OF WATER--APPEALS.--Pursuant to rules or bylaws duly adopted by its members, an acequia or community ditch may require that a change in the point of diversion or place or purpose of use of a water right served by the acequia or community ditch, or a change in a water right so that it is moved into and then served by the acequia or community ditch shall be subject to the approval by the commissioners. The change may be denied only if the commissioners determine that it would be detrimental to the acequia or community ditch or its members. The commissioners shall render a written decision explaining the reasons for the decision. If the person proposing the change or a member of the acequia or community ditch is aggrieved by the decision of the commissioners, he may appeal the decision in the district court of the county in which the acequia or community ditch is located within thirty days of the date of the decision. The court may set aside, reverse or remand the decision if it determines that the commissioners acted fraudulently, arbitrarily or capriciously or that they did not act in accordance with law."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is March 1, 2004.

HOUSE JUDICIARY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 303

CHAPTER 136

CHAPTER 136, LAWS 2003

AN ACT

RELATING TO THE ARMED FORCES; PROVIDING STATE BENEFITS FOR MEMBERS CALLED TO ACTIVE DUTY AND DEPLOYED AND FOR THE SURVIVING CHILDREN OF A MEMBER KILLED IN THE LINE OF DUTY; DECLARING AN EMERGENCY.

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

Section 1. STATE BENEFITS FOR MEMBERS OF ARMED FORCES CALLED TO ACTIVE DUTY AND DEPLOYED--BENEFITS FOR SURVIVING CHILDREN OF A MEMBER KILLED IN THE LINE OF DUTY.--

A. A New Mexico resident who is a member of the New Mexico national guard or of a branch of the federal armed forces and who is called to active duty and is deployed and serves during the period beginning on the effective date of this section and ending on the date the president of the United States declares that the emergency requiring the call-up is terminated is entitled to the following benefits, notwithstanding any provision of law to the contrary:

(1) a free general hunting and fishing license for the year following the year of the member's deactivation and return to the state;

(2) an extension of one year after the return of the member to the state of the date the member is required to file a state personal income tax return if the filing date occurs while the member is on active duty and deployed;

(3) an extension for one month after the member's return to the state of the date to renew a driver's license if the renewal date occurs while the member is on active duty and deployed; and

(4) a refund or credit of tuition paid to a state post-secondary educational institution for attendance during a period when the attendance of the member was interrupted by activation and deployment.

B. The surviving children of a New Mexico resident who was a member of the New Mexico national guard or of a branch of the federal armed forces and who was killed in the line of duty after being called to active duty and deployed during the period beginning on the effective date of this section and ending on the date the president of the United States declares that the emergency requiring the call-up is terminated are entitled to waivers of tuition for four consecutive years at a state post-secondary educational institution, notwithstanding any provision of law to the contrary.

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

SENATE BILL 933, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2003

CHAPTER 137

CHAPTER 137, LAWS 2003

AN ACT

RELATING TO WATER; PROVIDING FOR A COMPREHENSIVE STATE WATER PLAN.

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

Section 1. A new section of Chapter 72, Article 14 NMSA 1978 is enacted to read:

"STATE WATER PLAN--PURPOSE--CONTENTS.--

A. It is the intent of the legislature that the interstate stream commission, in collaboration with the office of the state engineer and the water trust board, prepare and implement a comprehensive state water plan.

B. The state water plan shall be a strategic management tool for the purposes of:

- (1) promoting stewardship of the state's water resources;
- (2) protecting and maintaining water rights and their priority status;
- (3) protecting the diverse customs, culture, environment and economic stability of the state;
- (4) protecting both the water supply and water quality;
- (5) promoting cooperative strategies, based on concern for meeting the basic needs of all New Mexicans;
- (6) meeting the state's interstate compact obligations;
- (7) providing a basis for prioritizing infrastructure investment; and
- (8) providing statewide continuity of policy and management relative to our water resources.

C. The interstate stream commission in collaboration with the office of the state engineer and in consultation with other government agencies as appropriate, shall develop a comprehensive, coordinated state water plan that shall:

- (1) identify and reflect the common priorities, goals and objectives that will have a positive impact on the public welfare of the state;

(2) establish a clear vision and policy direction for active management of the state's waters;

(3) include an inventory of the quantity and quality of the state's water resources, population projections and other water resource demands under a range of conditions;

(4) include water budgets for the state and for all major river basins and aquifer systems in the state;

(5) develop water conservation strategies and policies; to maximize beneficial use, including reuse and recycling by conjunctive management of water resources and by doing so to promote nonforfeiture of water rights;

(6) include a drought management plan designed to address drought emergencies, promote strategies for prevention of drought-related emergencies in the future and coordinate drought planning statewide;

(7) recognize the relationship between water availability and land-use decisions;

(8) promote river riparian and watershed restoration that focuses on protecting the water supply, improving water quality and complying with federal Endangered Species Act of 1973 mandates;

(9) consider water rights transfer policies that balance the need to protect the customs, culture, environment and economic health and stability of the state's diverse communities while providing for timely and efficient transfers of water between uses to meet both short-term shortages and long-term economic development needs;

(10) promote strategies and mechanisms for achieving coordination with all levels of government;

(11) integrate regional water plans into the state water plan as appropriate and consistent with state water plan policies and strategies;

(12) integrate plans of water supply purveyors, including those of local governments, privately owned public utilities, associations, cooperatives, irrigation districts and acequias as appropriate and consistent with state water plan policies and strategies, as those plans are completed and submitted to the office of the state engineer;

(13) identify water-related infrastructure and management investment needs and opportunities to leverage federal and other funding; and

(14) promote collaboration with and strategic focusing of the research and development of the state's national laboratories and research institutions to address the state's water challenges and to bring to the state demonstration projects in desalination, conservation, watershed restoration, weather modification and other technological approaches to enhancing water supply and management.

D. Recognizing that complete water rights adjudication, measurement, well inventories and adequate databases are essential elements of an effective water management plan, and further recognizing that completion of these work elements will require substantial time and resources until such time as these elements are complete, the state water plan shall include work plans and strategies for:

(1) completion of water rights adjudications, with required supporting documentation, including hydrographic surveys, aquifer mapping and aerial mapping of irrigated land;

(2) creation and completion of a comprehensive database and an electronically accessible information system on the state's water resources and water rights, including file abstraction and imaging of paper files as well as information on pending adjudications;

(3) measuring of surface and ground water uses in the state as necessary for management of the state's water resources; and

(4) taking inventory of existing water wells and determining appropriate disposition of unused wells.

E. The interstate stream commission and the office of the state engineer shall consult directly with the governments of Indian nations, tribes and pueblos to formulate a statement of policy and process to guide:

(1) coordination or integration of the water plans of Indian nations, tribes and pueblos located wholly or partially within New Mexico with the state water plan; and

(2) final adjudication or settlement of all water rights claims by Indian nations, tribes and pueblos located wholly or partially within New Mexico.

F. The interstate stream commission shall ensure that public participation and public input are integrated throughout the planning process. The interstate stream commission shall convene water planners and stakeholders from diverse constituencies to advise it and the office of the state engineer on the state water plan, including statewide policies, priorities, goals and objectives for the plan, issues of statewide concern and strategies for implementation of the plan. The interstate stream commission shall also ensure that representatives of the stakeholder groups affected by various plan components will participate in the development of those plan components.

Members of the interstate stream commission and water trust board shall be notified of and are welcome to participate in all aspects of the planning process.

G. After public review and comment, the state water plan developed in conformance with this section is subject to adoption by the interstate stream commission. Following its adoption, the state water plan shall be presented to the interim legislative committee that studies water and natural resources.

H. The state water plan shall be periodically reviewed, updated and amended in response to changing conditions. At a minimum a review shall be undertaken every five years.

I. Nothing in the state water plan shall be construed to permit the granting or the condemnation of water rights.

J. Nothing in the state water plan shall be construed to determine, abridge or affect the water rights of Indian nations, tribes or pueblos."

Section 2. A new section of the Water Project Finance Act is enacted to read:

"IMPLEMENTATION OF STATE WATER PLAN.--

A. The board, in conformance with the state water plan and pursuant to the provisions of the Water Project Finance Act, shall prioritize the planning and financing of water projects required to implement the plan.

B. The board shall identify opportunities to leverage federal and other funding.

C. The board shall utilize the resources of its member agencies and entities whenever possible in implementing the state water plan."

SENATE CONSERVATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 195,

AS AMENDED

CHAPTER 138

CHAPTER 138, LAWS 2003

AN ACT

RELATING TO WATER; REQUIRING MUNICIPALITIES, COUNTIES AND OTHER COVERED ENTITIES TO ADOPT WATER CONSERVATION AND DROUGHT MANAGEMENT PLANS.

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

Section 1. A new section of Chapter 3, Article 17 NMSA 1978 is enacted to read:

"WATER CONSERVATION AND DROUGHT MANAGEMENT PLANS.--A municipality shall consider ordinances and codes to encourage water conservation and drought management planning pursuant to the provisions of Section 3 of this act."

Section 2. A new section of Chapter 4 NMSA 1978 is enacted to read:

"WATER CONSERVATION AND DROUGHT MANAGEMENT PLANS.--A county shall consider ordinances and codes to encourage water conservation and drought management planning pursuant to the provisions of Section 3 of this act."

Section 3. A new section of Chapter 72, Article 14 NMSA 1978 is enacted to read:

"WATER CONSERVATION PLANS--MUNICIPALITIES, COUNTIES AND WATER SUPPLIERS.--

A. As used in this section, "covered entity" means municipalities, counties and any other person that supplies, distributes or otherwise provides at least five hundred acre-feet of water annually for domestic, commercial, industrial or government customers for other than agricultural purposes, but does not include Indian tribes, pueblos, nations, chapters or any entity of a tribe, pueblo, nation or chapter.

B. A covered entity may develop, adopt and submit to the state engineer by December 31, 2005 a comprehensive water conservation plan, including a drought management plan.

C. The manner in which the covered entity develops, adopts and implements a comprehensive water conservation plan shall be determined by the covered entity. The plan shall be accompanied by a program for its implementation.

D. In developing a water conservation plan pursuant to this section:

(1) municipalities and counties shall consider ordinances and codes to encourage conservation measures; covered entities without ordinance or code enforcement ability shall consider incentives to encourage voluntary compliance with a set of conservation guidelines. Covered entities shall identify and implement best practices in their operations to improve conservation of the resources; and

(2) the covered entity shall consider, and incorporate into its plan if appropriate, at least the following:

(a) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(b) low-water-use landscaping and efficient irrigation;

(c) water-efficient commercial and industrial water-use processes;

(d) water reuse systems for both potable and nonpotable water;

(e) distribution system leak repair;

(f) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(g) water rate structures designed to encourage water-use efficiency and reuse in a fiscally responsible manner; and

(h) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

E. The water conservation plan shall contain a section that references the regional water plans in the area that have been accepted by the interstate stream commission. The section shall cite conservation guidelines mentioned in the regional plan that have been adopted into the covered entity's water conservation plan.

F. A covered entity may at any time adopt changes to its water conservation plan and shall submit changes to the state engineer.

G. After December 31, 2005, neither the water trust board nor the New Mexico finance authority shall accept an application from a covered entity for financial assistance in the construction of any water diversion, storage, conveyance, water treatment or wastewater treatment facility unless the covered entity includes a copy of its water conservation plan."

Section 4. Section 6-21-23 NMSA 1978 (being Laws 1992, Chapter 61, Section 23, as amended) is amended to read:

"6-21-23. PROHIBITED ACTIONS.--The authority shall not:

- A. lend money or make a grant other than to a qualified entity;
- B. purchase securities other than from a qualified entity or other than for investment as provided in the New Mexico Finance Authority Act;
- C. lease a public project to any entity other than a qualified entity; except that the authority may lease a public project to any entity following termination of a lease of the public project to a qualified entity if leasing the public project to an entity other than a qualified entity is necessary to avoid forfeiture or impairment of the public project or a default on bonds whose payment is secured, in whole or in part, by the public project or by lease rentals from the public project;
- D. deal in securities within the meaning of or subject to any securities law, securities exchange law or securities dealers law of the United States or of the state or of any other state or jurisdiction, domestic or foreign, except as authorized in the New Mexico Finance Authority Act;
- E. issue bills of credit or accept deposits of money for time on demand deposit or administer trusts or engage in any form or manner, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association or any other kind of financial institution except as authorized in the New Mexico Finance Authority Act;
- F. engage in any form of private or commercial banking business except as authorized in the New Mexico Finance Authority Act;
- G. lend money, issue bonds, including public-private partnership project bonds, or make a grant for the promotion of gaming or a gaming enterprise or for development of infrastructure for a gaming facility; or
- H. after December 31, 2005, except in case of an emergency, accept an application for financial assistance from a municipality, county or other covered entity for a water or wastewater project unless it is submitted with a water conservation plan or a water conservation plan is on file with the state engineer in accordance with the provisions of Section 3 of this 2003 act."

Section 5. Section 72-4A-7 NMSA 1978 (being Laws 2001, Chapter 164, Section 7) is amended to read:

"72-4A-7. CONDITIONS FOR GRANTS AND LOANS.--

A. Grants and loans shall be made only to state agencies or to political subdivisions that:

(1) agree to operate and maintain the water project so that it will function properly over the structural and material design life, which shall not be less than twenty years;

(2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;

(3) provide written assurance signed by an attorney or provide a title insurance policy that the political subdivision has proper title, easements and rights of way to the property upon or through which the water project proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the board to ensure sufficient revenues to operate and maintain the water project for its useful life and to repay the loan;

(5) agree to properly maintain financial records and to conduct an audit of the project's financial records;

(6) agree to pay costs of originating grants and loans as determined by rules adopted by the board; and

(7) except in case of an emergency, submit a water conservation plan with its application if required to do so and one is not on file with the state engineer, pursuant to Section 3 of this 2003 act.

B. Plans and specifications for a water project shall be approved by the authority before grant or loan disbursements to pay for construction costs are made to a state agency or political subdivision.

C. Grants and loans shall be made only for eligible items, which include:

(1) to match federal and local cost shares;

(2) engineering feasibility reports;

(3) contracted engineering design;

(4) inspection of construction;

(5) special engineering services;

- (6) environmental or archaeological surveys;
- (7) construction;
- (8) land acquisition;
- (9) easements and rights of way; and
- (10) legal costs and fiscal agent fees."

SENATE BILL 554, AS AMENDED

CHAPTER 139

CHAPTER 139, LAWS 2003

AN ACT

RELATING TO WATER; AMENDING THE WATER PROJECT FINANCE ACT TO EXPAND THE SCOPE OF PERMITTED PROJECTS TO INCLUDE WATER CONSERVATION MEASURES; ALLOWING INDIAN NATIONS, TRIBES AND PUEBLOS TO RECEIVE DIRECT FINANCIAL ASSISTANCE FROM THE WATER TRUST BOARD; DECLARING AN EMERGENCY.

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

Section 1. Section 72-4A-2 NMSA 1978 (being Laws 2001, Chapter 164, Section 2) is amended to read:

"72-4A-2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

- (1) New Mexico is in a desert where water is a scarce resource;
- (2) the economy depends on reasonable and fair allocation of water for all purposes;
- (3) the public welfare depends on efficient use and conservation of water;
- (4) New Mexico must comply with its delivery obligations under interstate compacts; and

(5) public confidence and support for water use efficiency and conservation is based on a reasonable balance of investments in water infrastructure and management.

B. The purpose of the Water Project Finance Act is to provide for water use efficiency, resource conservation and protection and fair distribution and allocation of New Mexico's scarce water resources for beneficial purposes of use within the state."

Section 2. Section 72-4A-3 NMSA 1978 (being Laws 2001, Chapter 164, Section 3) is amended to read:

"72-4A-3. DEFINITIONS.--As used in the Water Project Finance Act:

A. "authority" means the New Mexico finance authority;

B. "board" means the water trust board;

C. "political subdivision" means a municipality, county, irrigation district, conservancy district, special district, acequia, soil and water conservation district, water and sanitation district or an association organized and existing pursuant to the Sanitary Projects Act;

D. "qualifying water project" means a project recommended by the board for funding by the legislature; and

E. "qualifying entity" means a state agency, a political subdivision of the state or a recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in New Mexico."

Section 3. Section 72-4A-5 NMSA 1978 (being Laws 2001, Chapter 164, Section 5) is amended to read:

"72-4A-5. BOARD--DUTIES.--The board shall:

A. adopt rules governing terms and conditions of grants or loans recommended by the board for appropriation by the legislature from the water project fund, giving priority to projects identified as being urgent to meet the needs of a regional water planning area that has had a completed regional water plan accepted by the interstate stream commission and that have matching contributions from federal or local funding sources available, and that has obtained all requisite state and federal permits and authorizations necessary to initiate the project; and

B. authorize qualifying water projects to the authority that are for:

(1) storage, conveyance or delivery of water to end users;

(2) implementation of federal Endangered Species Act of 1973 collaborative programs;

(3) restoration and management of watersheds;

(4) flood prevention; or

(5) conservation, recycling, treatment or reuse of water as provided by law."

Section 4. Section 72-4A-6 NMSA 1978 (being Laws 2001, Chapter 164, Section 6) is amended to read:

"72-4A-6. AUTHORITY--DUTIES.--The authority shall:

- A. provide staff support for the board;
- B. develop application procedures and forms for qualifying entities to apply for grants and loans from the water project fund; and
- C. make loans or grants to qualifying entities for qualifying water projects authorized by the legislature, provided that the service area for the project is wholly within the boundaries of the state."

Section 5. Section 72-4A-7 NMSA 1978 (being Laws 2001, Chapter 164, Section 7) is amended to read:

"72-4A-7. CONDITIONS FOR GRANTS AND LOANS.--

- A. Grants and loans shall be made only to qualifying entities that:
 - (1) agree to operate and maintain the water project so that it will function properly over the structural and material design life, which shall not be less than twenty years;
 - (2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;
 - (3) provide written assurance signed by an attorney or provide a title insurance policy that the qualifying entity has proper title, easements and rights of way to the property upon or through which the water project proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the board to ensure sufficient revenues to operate and maintain the water project for its useful life and to repay the loan;

(5) agree to properly maintain financial records and to conduct an audit of the project's financial records; and

(6) agree to pay costs of originating grants and loans as determined by rules adopted by the board.

B. Plans and specifications for a water project shall be approved by the authority, after review and upon the recommendation of the state engineer and department of environment, before grant or loan disbursements to pay for construction costs are made to a qualifying entity.

C. Grants and loans shall be made only for eligible items, which include:

(1) to match federal and local cost shares;

(2) engineering feasibility reports;

(3) contracted engineering design;

(4) inspection of construction;

(5) special engineering services;

(6) environmental or archaeological surveys;

(7) construction;

(8) land acquisition;

(9) easements and rights of way; and

(10) legal costs and fiscal agent fees."

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

SENATE BILL 841, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2003

CHAPTER 140

CHAPTER 140, LAWS 2003

AN ACT

RELATING TO WATER; PROVIDING LEGISLATIVE APPROVAL FOR THE WATER TRUST BOARD TO MAKE LOANS OR GRANTS FOR QUALIFYING WATER PROJECTS FROM THE WATER PROJECT FUND; DECLARING AN EMERGENCY.

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

Section 1. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions of Section 72-4A-9 NMSA 1978, the legislature authorizes the water trust board to make loans or grants from the water project fund to the following political subdivisions for the following qualifying projects on terms and conditions established by the water trust board and the New Mexico finance authority:

- A. to the city of Espanola for the Espanola valley regional San Juan-Chama water diversion project;
- B. to the city of Santa Fe for the Sante Fe regional San Juan-Chama water diversion project;
- C. to the town of Taos for the Taos valley regional San Juan-Chama water diversion project;
- D. to the city of Gallup for the Navajo-Gallup water supply project;
- E. to the city of Bloomfield for the Agua Para Los Vecinos regional water system project;
- F. to the Colfax soil and water conservation district for a watershed restoration and management project;
- G. to the Ute creek soil and water conservation district for a watershed restoration and management project;
- H. to the De Baca soil and water conservation district for a salt cedar, Russian olive and mesquite eradication project;

I. to the Claunch-Pinto soil and water conservation district for a watershed restoration and management project;

J. to the upper Hondo soil and water conservation district for an eradication project along the upper Hondo river and Rio Bonito;

K. to the San Francisco soil and water conservation district for a water quality and monitoring equipment project;

L. to the Tierra y Montes soil and water conservation district for a salt cedar eradication project;

M. to the Edgewood soil and water conservation district for a watershed restoration and management project; and

N. to the New Mexico office of Indian affairs for the Taos war chief of the Pueblo of Taos to conduct a watershed restoration and management project.

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

immediately.

SENATE BILL 843, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2003

CHAPTER 141

CHAPTER 141, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; CHANGING SPECIAL PERMIT REQUIREMENTS FOR THE MOVEMENT OF OVERSIZE MOTOR VEHICLES.

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

Section 1. Section 66-1-4.17 NMSA 1978 (being Laws 1990, Chapter 120, Section 18, as amended) is amended to read:

"66-1-4.17. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "tank vehicle" means a motor vehicle that is designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis and that has either a gross vehicle weight rating of twenty-six thousand one or more pounds or is used in the transportation of hazardous materials requiring placarding of the vehicle under applicable law;

B. "taxicab" means a motor vehicle used for hire in the transportation of persons, having a normal seating capacity of not more than seven persons;

C. "through highway" means every highway or portion thereof at the entrance to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing it when stop signs are erected as provided in the Motor Vehicle Code;

D. "title service company" means a person, other than the department, an agent of the department, a licensed dealer or the motor transportation division of the department of public safety, who for consideration issues temporary registration plates or prepares and submits to the department on behalf of others applications for registration of or title to motor vehicles;

E. "traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together using any highway for purposes of travel;

F. "traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed;

G. "traffic safety bureau" means the traffic safety bureau of the state highway and transportation department;

H. "trailer" means any vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no significant part of its weight rests upon the towing vehicle;

I. "transportation inspector" means an employee of the motor transportation division of the department of public safety who has been certified by the director of the division to enter upon and perform inspections of motor carriers' vehicles in operation;

J. "transporter of manufactured homes" means a commercial motor vehicle operation engaged in the business of transporting manufactured homes from the manufacturer's location to the first dealer's location. A "transporter of manufactured homes" may or may not be associated with or affiliated with a particular manufacturer or dealer;

K. "travel trailer" means a trailer with a camping body and includes recreational travel trailers and camping trailers;

L. "trial court" means the magistrate, municipal or district court that tries the case concerning an alleged violation of a provision of the Motor Vehicle Code;

M. "truck" means every motor vehicle designed, used or maintained primarily for the transportation of property;

N. "truck camper" means a camping body designed to be loaded onto, or affixed to, the bed or chassis of a truck. A camping body, when combined with a truck or truck cab and chassis, even though not attached permanently, becomes a part of the motor vehicle, and together they are a recreational unit to be known as a "truck camper"; there are three general types of truck campers:

(1) "slide-in camper" means a camping body designed to be loaded onto and unloaded from the bed of a pickup truck;

(2) "chassis-mount camper" means a camping body designed to be affixed to a truck cab and chassis; and

(3) "pickup cover" or "camper shell" means a camping body designed to provide an all-weather protective enclosure over the bed of a pickup truck and to be affixed thereto; and

O. "truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn."

Section 2. Section 66-7-411 NMSA 1978 (being Laws 1978, Chapter 35, Section 482, as amended) is amended to read:

"66-7-411. AUTHORIZED REPRESENTATIVE MAY WEIGH VEHICLES AND REQUIRE REMOVAL OF EXCESS LOADS--GRADUATED PENALTIES.--

A. Any police officer with the motor transportation division or New Mexico state police division of the department of public safety, having reason to believe that the weight of a vehicle and load is unlawful, may require the driver to stop and submit to weighing of the vehicle and load by means of either portable or stationary scales and may require the vehicle to be driven to the nearest scales approved by the department of public safety if the scales are within five miles.

B. When a police officer with the motor transportation division or New Mexico state police division of the department of the public safety or a transportation inspector, upon weighing a vehicle or combination, determines that the gross vehicle weight or combination gross vehicle weight exceeds the maximum authorized by

Sections 66-7-409 and 66-7-410 NMSA 1978, the officer or inspector shall require the driver or owner of the vehicle or combination to unload that portion of the load necessary to decrease the gross vehicle weight or combination gross vehicle weight to the authorized maximum.

C. Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to weighing or who fails or refuses, when directed by a duly authorized police officer with the motor transportation division or New Mexico state police division of the department of public safety or a transportation inspector, upon a weighing of the vehicle, to unload the vehicle and otherwise comply with the provisions of this section is guilty of a misdemeanor.

D. Any shipper or any other person loading the vehicle who intentionally overloads a vehicle which he has reason to believe will travel in that condition upon a public highway is guilty of a misdemeanor and shall be fined in accordance with Subsection E of this section.

E. In all cases of violations of weight limitations, the penalties shall be assessed and imposed in accordance with the following schedule:

WEIGHT OF EXCESS

LOAD IN POUNDS	AMOUNT OF FINE
1 to 3,000	twenty-five dollars (\$25.00)
3,001 to 4,000	forty dollars (\$40.00)
4,001 to 5,000	seventy-five dollars (\$75.00)
5,001 to 6,000	one hundred twenty-five dollars (\$125)
6,001 to 7,000	two hundred dollars (\$200)
7,001 to 8,000	two hundred seventy-five dollars (\$275)
8,001 to 9,000	three hundred fifty dollars (\$350)
9,001 to 10,000	four hundred twenty-five dollars (\$425)
over 10,000	five hundred dollars (\$500)."

Section 3. Section 66-7-412 NMSA 1978 (being Laws 1959, Chapter 247, Section 1, as amended) is amended to read:

"66-7-412. SPECIAL FARM PERMITS.--The motor transportation division of the department of public safety shall have the authority to issue special permits at all ports of entry where registration stations or places where inspection and registration services are maintained by the motor transportation division to all implements of husbandry using the highways, including farm tractors, and to the instrumentalities or vehicles that may be carrying the implements of husbandry, including farm tractors, when the securing of these permits is required by law."

Section 4. Section 66-7-413 NMSA 1978 (being Laws 1978, Chapter 35, Section 484, as amended) is amended to read:

"66-7-413. PERMITS FOR EXCESSIVE SIZE AND WEIGHT--SPECIAL NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES.--

A. The department of public safety and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on any highway under the jurisdiction of the state transportation commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for any person to violate any of the conditions or terms of the special permit.

B. The department of public safety shall charge and collect, when the movement consists of any load of a width of twenty feet or greater for a distance of five miles or more, the sum of three hundred dollars (\$300) a day or fraction thereof to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one time requiring police escort and not upon the number of vehicles involved.

C. The department of public safety shall promulgate regulations in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier himself and for escort vehicles provided by a private business in this state.

(1) If a motor carrier provides his own escort vehicles and personnel, the department of public safety shall not charge an escort fee but shall provide the motor carrier escort personnel with a copy of applicable regulations and

shall inspect the escort vehicles for the safety equipment required by the regulations. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the motor carrier holds a valid certificate of public convenience and necessity or permit, as applicable, issued pursuant to Chapter 65, Article 2 NMSA 1978, the department of public safety shall issue the special permit.

(2) If the escort service is a private business, the business shall have applied to the public regulation commission for and been issued a permit or certificate to operate as a contract or common motor carrier pursuant to Chapter 65, Article 2 NMSA 1978. The public regulation commission shall supply copies of applicable regulations to the business by mail and shall supply additional copies upon request. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the escort service holds a certificate, the special permit shall be issued and the department of public safety shall not charge an escort fee.

(3) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraphs (1) and (2) of this subsection is subject to department of public safety authority and inspection at all times.

(4) The state highway and transportation department shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the state highway and transportation department shall hold public hearings in the area of the state affected by the determination, after which it may adopt regulations designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If any portion of such a four-lane highway lies within the boundaries of a municipality, the state highway and transportation department, after obtaining the approval of the municipal governing body, shall include such portions in its regulations.

D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department of public safety for a period not to exceed one year for a fee of sixty dollars (\$60.00). The permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the operation is to be within the vicinity of a municipality.

E. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued by the department of public safety for a single vehicle for a fee of fifteen dollars (\$15.00).

F. If the vehicle for which a permit is issued under this section is a manufactured home, the department of public safety or local highway authority issuing the permit shall furnish the following information to the property tax division of the taxation and revenue department, which shall then forward the information:

(1) to the county assessor of any county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property taxation.

G. Except as provided in Subsection H of this section, if the movement of a manufactured home originates in this state, no permit shall be issued under Subsection F of this section until the owner of the manufactured home or his authorized agent obtains and presents to the department of public safety proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) no liability for property taxes on the manufactured home exists for the current tax year or any past tax years, except for manufactured homes located on an Indian reservation.

H. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection G of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of his inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or his authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection G of this section whether the destination is the business location of a dealer or some other destination.

I. No permit shall be issued under this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the

limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

J. The secretary of public safety may by regulation provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes; however, in no case may the cost of each permit be less than fifteen dollars (\$15.00).

K. The secretary of public safety may provide by regulation for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department of public safety shall charge a fee for each self-issued permit not to exceed fifteen dollars (\$15.00).

L. Any private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing:

(a) fifty thousand dollars (\$50,000) for each person; and

(b) one hundred thousand dollars (\$100,000) for each accident; and

(2) property damage liability, providing twenty-five thousand dollars (\$25,000) for each accident.

M. Any common motor carrier requesting an oversize permit shall produce a copy of a form "e" or other acceptable evidence that the common motor carrier maintains the insurance minimums prescribed by the public regulation commission.

N. The department of public safety may provide by regulation the time periods during which a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 may be operated or moved by a motor carrier on a highway under the jurisdiction of the state transportation commission or local authorities."

Section 5. Section 66-7-413.2 NMSA 1978 (being Laws 1989, Chapter 291, Section 1) is amended to read:

"66-7-413.2. ENGINEERING INVESTIGATIONS FOR VEHICLES IN EXCESS OF ONE HUNDRED SEVENTY THOUSAND POUNDS.--

A. All vehicles with a gross vehicle weight in excess of one hundred seventy thousand pounds shall require a special permit as provided for in Section 66-7-413 NMSA 1978 and no such permit shall be issued unless:

(1) an engineering investigation and review have been conducted to:

(a) establish whether the move could be made without visible or documented damages to the portion of road or bridges upon which the move is to be made;

(b) establish whether the move could be made without visible or documented damages to any private facilities along the road upon which the move is to be made; and

(c) estimate the cost for any necessary modifications the move may cause; and

(2) when required, the applicant has submitted to the motor transportation division of the department of public safety and the local highway authorities all pertinent information requested of the applicant by the motor transportation division of the department of public safety. If the submitted data is not acceptable to the state highway and transportation department, the applicant will be advised by the motor transportation division of the department of public safety that engineering investigations will be conducted by the state highway and transportation department and the cost incurred by the state highway and transportation department will be paid by the applicant as an added cost to his permit fee.

B. The motor transportation division of the department of public safety shall adopt the necessary rules and regulations for the development of data for an investigation to determine whether to issue any special permit pursuant to Section 66-7-413 NMSA 1978.

C. The applicant or the applicant's employer shall pay the costs for any modifications to the road, bridges or private facilities along the road that the motor transportation division of the department of public safety has determined are necessary for the issuance of the special permit and the costs for any damages to the road or bridges that are the result of the move and the fault of the mover and not the motor transportation division of the department of public safety.

D. Any person who violates the provisions of Subsection A of this section shall be guilty of a misdemeanor and punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment for a definite term not to exceed six months, or both.

E. Nothing contained in this section shall limit in any manner the authority of the state, a county, a municipality or a political subdivision thereof to collect damages for any unlawful use of highways as provided by law.

HOUSE BILL 591

CHAPTER 142

CHAPTER 142, LAWS 2003

AN ACT

RELATING TO TRANSPORTATION; CORRECTING THE NAME OF THE STATE TRANSPORTATION COMMISSION IN STATUTE; CHANGING THE NAME OF THE STATE HIGHWAY AND TRANSPORTATION DEPARTMENT AND THE SECRETARY OF HIGHWAY AND TRANSPORTATION; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 3-33-10 NMSA 1978 (being Laws 1977, Chapter 325, Section 4) is amended to read:

"3-33-10. IMPROVEMENT DISTRICT--LIMITATIONS ON POWERS OF MUNICIPALITY WITH RESPECT TO STREET OR RIGHT OF WAY UNDER JURISDICTION OF STATE TRANSPORTATION COMMISSION.--The municipality shall not construct improvements authorized by Section 3-33-3 NMSA 1978 on or through any street or right of way under the jurisdiction of the state transportation commission unless it receives prior written approval from the state transportation commission to undertake such improvements."

Section 2. Section 4-55A-6 NMSA 1978 (being Laws 1980, Chapter 91, Section 6) is amended to read:

"4-55A-6. IMPROVEMENT DISTRICT--LIMITATIONS ON POWERS OF COUNTY WITH RESPECT TO STREET OR RIGHT OF WAY UNDER JURISDICTION OF STATE TRANSPORTATION COMMISSION.--The county shall not construct improvements on or through any street or right of way under the jurisdiction of the state transportation commission unless it receives prior written approval from the state transportation commission to undertake such improvements."

Section 3. Section 13-6-2.1 NMSA 1978 (being Laws 1989, Chapter 380, Section 1, as amended) is amended to read:

"13-6-2.1. SALES, TRADES OR LEASES--BOARD OF FINANCE APPROVAL.--

A. Except as provided in Section 13-6-3 NMSA 1978, for state agencies, any sale, trade or lease for a period of more than five years of real property belonging to a state agency, local public body or school district or any sale, trade or lease of such real property for a consideration of more than twenty-five thousand dollars (\$25,000) shall not be valid unless it is approved prior to its effective date by the state board of finance.

B. The provisions of this section shall not be applicable as to those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico, the state land office or the state transportation commission."

Section 4. Section 13-6-3 NMSA 1978 (being Laws 1961, Chapter 41, Section 1, as amended) is amended to read:

"13-6-3. SALE, TRADE OR LEASE OF REAL PROPERTY BY STATE AGENCIES--APPROVAL OF LEGISLATURE--EXCEPTIONS.--

A. Any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to any state agency, which sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$100,000) or more, shall be subject to the ratification and approval of the state legislature prior to the sale, trade or lease becoming effective. The provision specified in Section 13-6-2 NMSA 1978 requiring approval of the state budget division of the department of finance and administration as a prerequisite to consummating such sales or dispositions of realty shall not be applicable in instances wherein the consideration for the sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$100,000) or more and wherein a state agency not specifically excepted by Subsection B of this section is a contracting party, and, in every such instance, the legislature shall specify its approval prior to the sale, trade or lease becoming effective.

B. The provisions of this section shall not be applicable as to those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico, the state land office or the state transportation commission."

Section 5. Section 63-3-37 NMSA 1978 (being Laws 1929, Chapter 97, Section 3, as amended) is amended to read:

"63-3-37. SEPARATION OF GRADE CROSSING--DETERMINATION--COST.-- Whenever a state, county, municipal or other street or highway, including a highway that may be designated as a part of the federal aid highway system, which may be constructed or reconstructed in such manner that it crosses or intersects any railroad, the state transportation commission, or other governing body, may, if in its opinion it is practicable and reasonably necessary for the protection of the traveling public, separate the grades at such crossing and, if unable to agree with the railroad as to the grade

separation and the method of accomplishing the separation, may apply to the district court of the county in which the separation is located by verified petition praying for the separation of grades at the crossing and shall accompany the petition with plans and specifications of the proposed grade separation. The procedure on the petition shall be the same as in ordinary civil action. If the court determines in such proceeding that the grade separation is practicable and reasonably necessary for the protection of the traveling public over the highway, it shall order the grade separation to be made, either in accordance with the plans and specifications filed with the petition or in accordance with such modification of the plans and specifications as the court determines to be proper, and upon condition that the then existing grade crossing shall be closed to all forms of street or highway traffic upon the completion of the grade separation. The orders of court in such proceedings shall be enforced in the same manner as decrees in equity. When any separation of grades is made either by agreement or by court order, the railroad company shall pay not to exceed ten percent of the cost between the grade separation limits, provided that the then existing grade crossing shall be closed to all forms of street or highway traffic upon the completion of the grade separation and provided that where funds are made available for such purposes under the provisions of the act of congress known as 23 USCA 101 et seq., as amended and supplemented, the participation of the railroad company in the cost of construction and maintenance of any grade separation structure and the approaches thereto shall be in conformity with and subject to the provisions of that act. In cases where two or more railroads are located in such proximity to each other as to be involved in any single separation of grades, the portion of the cost of the grade separation shall be apportioned between the railroads either by agreement or in such manner as may be just by order of court in such proceeding. Whenever the plans and specifications for a grade separation, as finally fixed by agreement or order of court, provide for raising or lowering the grade of the railroad tracks, the cost shall be included in the cost of the grade separation."

Section 6. Section 63-3-38 NMSA 1978 (being Laws 1929, Chapter 97, Section 4) is amended to read:

"63-3-38. MAINTENANCE OF GRADE CROSSING.--After construction of every grade separation, the state transportation commission shall maintain the highway roadbed and the structures supporting it and the railroad shall maintain its roadway and track and the structures supporting them."

Section 7. Section 66-1-4.16 NMSA 1978 (being Laws 1990, Chapter 120, Section 17, as amended) is amended to read:

"66-1-4.16. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they are cracked and broken;

B. "safety zone" means the area or space officially set apart within a highway for the exclusive use of pedestrians and that is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone;

C. "school bus" means any motor vehicle operating under the authority of the state board of education or private school or parochial school interests that is used to transport children, students or teachers to and from schools or to and from any school activity, but not including any vehicle:

(1) operated by a common carrier, subject to and meeting all requirements of the public regulation commission but not used exclusively for the transportation of pupils;

(2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the public regulation commission but is not used exclusively for the transportation of pupils; or

(3) operated as a per capita feeder as defined in Section 22-16-6 NMSA 1978;

D. "seal" means the official seal of the taxation and revenue department as designated by the secretary;

E. "secretary" means the secretary of taxation and revenue, and, except for the purposes of Sections 66-2-3

and 66-2-12 NMSA 1978, also includes the deputy secretary and any division director delegated by the secretary;

F. "semitrailer" means any vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some significant part of its weight and that of its load rests upon or is carried by another vehicle;

G. "sidewalk" means that portion of street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians;

H. "slow-moving vehicle" means any vehicle that is ordinarily moved, operated or driven at a speed less than twenty-five miles per hour;

I. "solid tire" means every tire of rubber or other resilient material that does not depend upon compressed air for the support of the load;

J. "special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including but not limited to farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers;

K. "specially constructed vehicle" means every vehicle of a type required to be registered under the Motor Vehicle Code not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction;

L. "state" means any state, territory or possession of the United States, the District of Columbia or any province of the Dominion of Canada;

M. "state highway" means any public highway that has been designated as a state highway by the legislature, the state transportation commission or the secretary of transportation;

N. "stop", when required, means complete cessation from movement;

O. "stop, stopping or standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal;

P. "street" or "highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

Q. "subsequent offender" means a person who was previously a first offender and who again, under state law, federal law or municipal ordinance, has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug that rendered him incapable of safely driving a motor vehicle, regardless of whether the person's sentence was suspended or deferred; and

R. "suspension" means that a person's driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn."

Section 8. Section 66-3-836 NMSA 1978 (being Laws 1978, Chapter 35, Section 142) is amended to read:

"66-3-836. STANDARDS FOR LIGHTS ON SNOW-REMOVAL EQUIPMENT.--

A. The state transportation commission shall adopt standards and specifications applicable to headlamps, clearance lamps, identification and other lamps

on snow-removal equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by Sections 66-3-801 through 66-3-887 NMSA 1978. The standards and specifications may permit the use of flashing lights for purposes of identifications on snow-removal equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and, so far as possible, conform with those approved by the American association of state highway officials.

B. It is unlawful to operate any snow-removal equipment on any highway unless the lamps on the equipment comply with and are lighted when and as required by the standards and specifications adopted as provided in this section."

Section 9. Section 66-3-847 NMSA 1978 (being Laws 1978, Chapter 35, Section 153) is amended to read:

"66-3-847. RESTRICTIONS AS TO TIRE EQUIPMENT.--

A. When the use thereof is permitted, every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one-inch thick above the edge of the flange of the entire periphery.

B. A person shall not operate or move on a highway a motor vehicle, trailer or semitrailer having any metal tire in contact with the roadway except that for the purposes of the Motor Vehicle Code, a snow tire with metal studs designed to increase traction on ice or snow shall not be considered a metal tire.

C. No tire on a vehicle moved on a highway shall have on its periphery any block, flange, cleat or spike or any other protuberance of any material other than rubber that projects beyond the tread of the traction surface of the tire except that it shall be permissible to use farm machinery with tires having protuberances that will not injure the highway and except also that it shall be permissible to use tire chains of reasonable proportions or snow tires with metal studs designed to increase traction on ice or snow upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid.

D. The state transportation commission and local authorities, in their respective jurisdictions, may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under the Motor Vehicle Code.

E. A vehicle equipped with solid rubber or cushion tires shall not be permitted upon any highway of this state without special permission first being granted by the state transportation commission or the local authority having jurisdiction over the

highway affected, and in no event may any such vehicle be operated at a speed in excess of that specified by law."

Section 10. Section 66-7-9 NMSA 1978 (being Laws 1978, Chapter 35, Section 379, as amended) is amended to read:

"66-7-9. POWERS OF LOCAL AUTHORITIES.--

A. The provisions of the Motor Vehicle Code shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:

- (1) regulating the standing or parking of vehicles;
- (2) regulating traffic by means of police officers or traffic-control signals;
- (3) regulating or prohibiting processions or assemblages on the highways;
- (4) designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;
- (5) regulating the speed of vehicles in public parks;
- (6) designating any highway as a through highway and requiring that all vehicles stop before entering or crossing it or designating any intersection as a stop intersection or a yield intersection and requiring all vehicles to stop or yield at one or more entrances to the intersection;
- (7) restricting the use of highways as authorized in the Motor Vehicle Code;
- (8) regulating the operation of bicycles and requiring their registration and licensing, including the requirement of a registration fee;
- (9) regulating or prohibiting the turning of vehicles, or specified types of vehicles, at intersections;
- (10) altering the maximum speed limits as authorized in the Motor Vehicle Code;
- (11) adopting other traffic regulations as specifically authorized by the Motor Vehicle Code;

(12) regulating the operation of snowmobiles on public lands, waters and property under their jurisdiction and on streets and highways within their boundaries by resolution or ordinance of their governing bodies and by giving appropriate notice, if such regulation is not inconsistent with the provisions of Sections 66-9-1 through 66-9-13 NMSA 1978; or

(13) regulating the operation of golf carts on public lands and property under their jurisdiction and on streets and roads within their boundaries by resolution or ordinance of their governing bodies and requiring their registration and licensing, including the payment of a registration fee; provided, the resolution or ordinance shall:

(a) not permit operation of a golf cart on any state highway;

(b) require that the golf cart be in compliance with Section 66-3-887 NMSA 1978; and

(c) not be inconsistent with the provisions of Sections 66-3-1001 through 66-3-1016 NMSA 1978.

B. No local authority shall erect or maintain any stop sign or traffic-control signal at any location so as to require the traffic on any state highway to stop or yield before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state transportation commission.

C. No ordinance or regulation enacted under Paragraph (4), (5), (6), (7) or (10) of Subsection A of this section shall be effective until signs giving notice of the local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate."

Section 11. Section 66-7-101 NMSA 1978 (being Laws 1978, Chapter 35, Section 381) is amended to read:

"66-7-101. STATE TRANSPORTATION COMMISSION TO ADOPT SIGN MANUAL.--The state transportation commission shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of Chapter 66, Article 7 NMSA 1978 for use upon highways within this state. The uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway officials."

Section 12. Section 66-7-102 NMSA 1978 (being Laws 1978, Chapter 35, Section 382) is amended to read:

"66-7-102. STATE TRANSPORTATION COMMISSION TO SIGN ALL STATE HIGHWAYS.--

A. The state transportation commission shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all state highways as it deems necessary to indicate and to carry out the provisions of Chapter 66, Article 7 NMSA 1978 or to regulate, warn or guide traffic.

B. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the state transportation commission except by permission of the commission."

Section 13. Section 66-7-102.1 NMSA 1978 (being Laws 1989, Chapter 320, Section 7) is amended to read:

"66-7-102.1. STATE TRANSPORTATION COMMISSION--SPEED LIMIT SIGNS.--The state transportation commission shall erect billboard-size signs at entry points into New Mexico on interstate and major state highways, warning and informing motorists of New Mexico speed limits, the fines for speeding in New Mexico and New Mexico's commitment to enforce its speed limits."

Section 14. Section 66-7-304 NMSA 1978 (being Laws 1978, Chapter 35, Section 408) is amended to read:

"66-7-304. COUNTY ROADS--AUTHORITY TO REGULATE SPEED LIMITS.--

A. The board of county commissioners of a county may alter and establish speed limits lower than those established by law on county roads within its county, provided that:

(1) the speed limit is deemed to be reasonable and safe under local conditions on the basis of an engineering survey and traffic investigation;

(2) the alteration of a speed limit is approved by the state transportation commission; and

(3) the county posts speed limit signs that conform to the specifications as set forth in the manual adopted by the state transportation commission before enforcing the speed limit.

B. As used in this section, "county roads" means any streets, roads or highways built and maintained by the county or the control of which has been given to the county by the state transportation commission."

Section 15. Section 66-7-305 NMSA 1978 (being Laws 1978, Chapter 35, Section 409) is amended to read:

"66-7-305. MINIMUM SPEED REGULATION.--

A. A person shall not drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or to be in compliance with law.

B. Whenever the state transportation commission or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the commission or the local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or to be in compliance with law; provided that local authorities in municipalities of more than one hundred thousand population may prohibit vehicles that by virtue of weight or design are slow moving on local arterials during peak hours of traffic."

Section 16. Section 66-7-306 NMSA 1978 (being Laws 1978, Chapter 35, Section 410) is amended to read:

"66-7-306. SPECIAL SPEED LIMITATIONS.--

A. Subject to the requirements of Section

66-3-847 NMSA 1978, no person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than ten miles per hour.

B. A person shall not drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed that is greater than the maximum speed that can be maintained with safety to the bridge or structure when such structure is signposted as provided in this section.

C. The state transportation commission upon request from a local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it finds that the structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under the Motor Vehicle Code, the commission shall determine and declare the maximum speed of vehicles that the structure can withstand and shall cause or permit suitable signs stating the maximum speed to be erected and maintained at a minimum distance of three hundred feet before each end of the structure.

D. Upon the trial of a person charged with a violation of this section, proof of determination of the maximum speed by the state transportation commission and the existence of suitable signs constitutes conclusive evidence of the maximum speed that can be maintained with safety to the bridge or structure."

Section 17. Section 66-7-315 NMSA 1978 (being Laws 1978, Chapter 35, Section 419) is amended to read:

"66-7-315. NO-PASSING ZONES.--

A. The state transportation commission and local authorities may determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions of the signs or markings.

B. Where signs or markings are in place to define a no-passing zone as set forth in Subsection A of this section, no driver shall at any time drive on the left side of the roadway within the no-passing zone or on the left side of any pavement striping designed to mark the no-passing zone throughout its length.

C. This section does not apply under the conditions described in Paragraph (2) of Subsection A of Section 66-7-308 NMSA 1978 or to the driver of a vehicle turning left into or from an alley, private road or driveway."

Section 18. Section 66-7-316 NMSA 1978 (being Laws 1978, Chapter 35, Section 420) is amended to read:

"66-7-316. ONE-WAY ROADWAYS AND ROTARY TRAFFIC ISLANDS.--

A. The state transportation commission may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice of that designation.

B. Upon a roadway designated and signposted for one-way traffic, a vehicle shall be driven only in the direction designated.

C. A vehicle passing around a rotary traffic island shall be driven only to the right of the island."

Section 19. Section 66-7-321 NMSA 1978 (being Laws 1953, Chapter 139, Section 75, as amended) is amended to read:

"66-7-321. RESTRICTIONS ON USE OF CONTROLLED-ACCESS ROADWAY.-

A. The state transportation commission, by resolution or order entered in its minutes, and local authorities, by ordinance, may regulate or prohibit the use of any controlled-access roadway within their respective jurisdictions by any class or kind of traffic that is found to be incompatible with the normal and safe movement of traffic.

B. The state transportation commission or the local authority adopting any such prohibition shall erect and maintain official traffic-control devices on the controlled-access roadway on which the prohibitions are applicable, and, when in place, no person shall disobey the restrictions stated on the devices."

Section 20. Section 66-7-336 NMSA 1978 (being Laws 1953, Chapter 139, Section 89.1, as amended) is amended to read:

"66-7-336. SCHOOL CROSSINGS.--

A. Crosswalks may be established over highways abutting a school or the grounds adjacent to a school, and all children crossing the highways shall be required to do so within the marked crosswalks. The state transportation commission, with respect to state highways, and local authorities, with respect to streets under their jurisdiction, with advice of the local superintendent of schools, shall establish and mark or cause to be marked these highway crossings.

B. Crosswalks over highways not abutting school grounds may be established by the state transportation commission, with respect to state highways, and by local authorities, with respect to streets under their jurisdiction, with advice of the local superintendent of schools and after adequate assurance has been given that proper safety precautions will be maintained pursuant to regulations of the state transportation commission and of the local authorities. Responsibility for maintaining the crossing will be with the appropriate county or municipality wherein the school is located.

C. At all school crossings except as provided in this section, appropriate signs shall be provided as prescribed by the state transportation commission or local authorities within their respective jurisdictions, indicating the crossings and regulating traffic movement within the school zones.

D. School crossings are not required to be specially posted when they are located at:

- (1) a signalized intersection;
- (2) an intersection where traffic is controlled by a stop sign; or
- (3) a point where a pedestrian tunnel or overhead crossing is

provided."

Section 21. Section 66-7-342 NMSA 1978 (being Laws 1978, Chapter 35, Section 446) is amended to read:

"66-7-342. ALL VEHICLES MUST STOP AT CERTAIN RAILROAD GRADE CROSSINGS.--The state transportation commission and local authorities with the approval of the state transportation commission are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs at those crossings. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of the railroad and shall proceed only upon exercising due care."

Section 22. Section 66-7-345 NMSA 1978 (being Laws 1965, Chapter 91, Section 3) is amended to read:

"66-7-345. AUTHORITY TO DESIGNATE THROUGH HIGHWAYS AND STOP AND YIELD INTERSECTIONS.--

A. The state transportation commission, with reference to state and county highways, and local authorities, with reference to other highways under their jurisdiction, may designate through highways and erect stop signs or yield signs at specified entrances thereto or may designate any intersection as a stop intersection or as a yield intersection and erect stop signs or yield signs at one or more entrances to the intersection.

B. Preferential right of way at an intersection may be indicated by stop signs or yield signs as authorized in the Motor Vehicle Code.

C. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway before entering the intersection.

D. The driver of a vehicle approaching a yield sign, if required for safety to stop, shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway."

Section 23. Section 66-7-413 NMSA 1978 (being Laws 1978, Chapter 35, Section 484, as amended) is amended to read:

"66-7-413. PERMITS FOR EXCESSIVE SIZE AND WEIGHT--SPECIAL NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES.--

A. The department and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight

exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on any highway under the jurisdiction of the state transportation commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for any person to violate any of the conditions or terms of the special permit.

B. The department shall charge and collect, when the movement consists of any load of a width of twenty feet or greater for a distance of five miles or more, the sum of three hundred dollars (\$300) a day or fraction thereof to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one time requiring police escort and not upon the number of vehicles involved.

C. The department shall promulgate regulations in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier himself and for escort vehicles provided by a private business in this state.

(1) If a motor carrier provides his own escort vehicles and personnel, the department shall not charge an escort fee but shall provide the motor carrier escort personnel with a copy of applicable regulations and shall inspect the escort vehicles for the safety equipment required by the regulations. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the motor carrier holds a valid certificate of public convenience and necessity or permit, as applicable, issued pursuant to Chapter 65, Article 2 NMSA 1978, the department shall issue the special permit.

(2) If the escort service is a private business, the business shall have applied to the public regulation commission for and been issued a permit or certificate to operate as a contract or common motor carrier pursuant to Chapter 65, Article 2 NMSA 1978. The public regulation commission shall supply copies of applicable regulations to the business by mail and shall supply additional copies upon request. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the escort service holds a certificate, the special permit shall be issued and the department shall not charge an escort fee.

(3) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraphs

(1) and (2) of this subsection is subject to department authority and inspection at all times.

(4) The department of transportation shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the department of transportation shall hold public hearings in the area of the state affected by the determination, after which it may adopt regulations designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If any portion of such a four-lane highway lies within the boundaries of a municipality, the department of transportation, after obtaining the approval of the municipal governing body, shall include such portions in its regulations.

D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department for a period not to exceed one year for a fee of sixty dollars (\$60.00). The permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the operation is to be within the vicinity of a municipality.

E. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued for a single vehicle for a fee of fifteen dollars (\$15.00).

F. If the vehicle for which a permit is issued under this section is a manufactured home, the department or local highway authority issuing the permit shall furnish the following information to the property tax division of the department, which shall then forward the information:

(1) to the county assessor of any county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property taxation.

G. Except as provided in Subsection H of this section, if the movement of a manufactured home originates in this state, no permit shall be issued under Subsection F of this section until the owner of the manufactured home or his authorized agent obtains and presents to the department proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) no liability for property taxes on the manufactured home exists for the current tax year or any past tax years, except for manufactured homes located on an Indian reservation.

H. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection G of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of his inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or his authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection G of this section whether the destination is the business location of a dealer or some other destination.

I. No permit shall be issued under this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

J. The secretary may by regulation provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes; however, in no case may the cost of each permit be less than fifteen dollars (\$15.00).

K. The secretary may provide by regulation for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department shall charge a fee for each self-issued permit not to exceed fifteen dollars (\$15.00).

L. Any private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing:

(a) fifty thousand dollars (\$50,000) for each person; and

(b) one hundred thousand dollars (\$100,000) for each accident; and

(2) property damage liability, providing twenty-five thousand dollars (\$25,000) for each accident.

M. Any common motor carrier requesting an oversize permit shall produce a copy of a form "e" or other acceptable evidence that the common motor carrier maintains the insurance minimums prescribed by the public regulation commission."

Section 24. Section 66-7-415 NMSA 1978 (being Laws 1955, Chapter 37, Section 12, as amended) is amended to read:

"66-7-415. WHEN THE STATE TRANSPORTATION COMMISSION OR LOCAL AUTHORITIES MAY RESTRICT RIGHT TO USE STREETS.--

A. Local authorities, with respect to streets under their jurisdiction, may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or may impose limitations as to the size or weight thereof, on designated streets in areas that are primarily residential, which prohibitions and limitations shall be designated by appropriate signs placed on such street.

B. The local authority enacting an ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any street affected, and the ordinance or resolution shall not be effective unless and until such signs are erected and maintained and notice thereof given in writing to the nearest officer or employee of the motor transportation division of the department of public safety authorized to issue special permits.

C. The state transportation commission shall likewise have authority, as granted to local authorities in Subsections A and B of this section, to determine by resolution and to impose restrictions as to the size and weight of vehicles operated upon any highways under the jurisdiction of the commission, and such restrictions shall be effective on and after the passage of a resolution and when signs giving notice thereof are erected upon the highway or portion of any highway affected by such resolution. The commission shall deliver a copy of all restrictions adopted by it to the motor transportation division of the department of public safety."

Section 25. Section 67-2-4 NMSA 1978 (being Laws 1929, Chapter 77, Section 1, as amended) is amended to read:

"67-2-4. DEFINITIONS.--As used in Chapter 67 NMSA 1978:

A. "state highway" shall include any highway declared to be a state highway by an act of the legislature or designated as such by the state highway engineer;

B. "department" means the department of transportation; and

C. "secretary" means the secretary of transportation."

Section 26. Section 67-3-1 NMSA 1978 (being Laws 1935, Chapter 44, Section 1, as amended) is amended to read:

"67-3-1. REIMBURSEMENT OF STATE TRANSPORTATION COMMISSIONERS.--The members of the state transportation commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 27. Section 67-3-2 NMSA 1978 (being Laws 1967, Chapter 266, Section 1, as amended) is amended to read:

"67-3-2. STATE TRANSPORTATION COMMISSIONERS--NUMBER--APPOINTMENT--POWERS--TERM OF OFFICE--BOND.--

A. The state transportation commission shall consist of six members to be appointed by the governor with the advice and consent of the senate.

B. State transportation commissioners shall be appointed for staggered terms of six years each commencing on January 1 so that the terms of not more than two commissioners expire on December 31 of each even-numbered year. Any vacancy shall be filled by appointment by the governor with the approval of the senate for the remainder of the unexpired term.

C. Each of the members, in order to qualify as such, shall take the usual oath and execute in favor of the state a surety company bond in a form approved by the attorney general in the amount of twenty-five thousand dollars (\$25,000) conditioned upon the faithful performance of his duties. No more than four of the appointed commissioners shall belong to the same political party.

D. The state transportation commission shall have the power to determine all matters of policy for the department."

Section 28. Section 67-3-3 NMSA 1978 (being Laws 1967, Chapter 266, Section 2, as amended) is amended to read:

"67-3-3. STATE TRANSPORTATION COMMISSION DISTRICTS--ONE MEMBER APPOINTED FROM EACH DISTRICT--RESIDENCE REQUIREMENTS.--

A. There are created six state transportation commission districts as follows:

(1) district 1, which shall be composed of the counties of Socorro, Grant, Sierra, Dona Ana, Luna and Hidalgo;

(2) district 2, which shall be composed of the counties of Lea, Eddy, Chaves, Roosevelt, Curry, DeBaca, Lincoln and Otero;

(3) district 3, which shall be composed of the counties of Bernalillo and Valencia and, in Sandoval county, all of townships twelve and thirteen north, ranges one, two, three, four, five and six east and all of townships fourteen, fifteen and sixteen north, ranges four, five and six east;

(4) district 4, which shall be composed of the counties of Colfax, Union, Mora, Harding, San Miguel, Quay and Guadalupe;

(5) district 5, which shall be composed of the counties of San Juan, Rio Arriba, Taos, Santa Fe, Torrance and Los Alamos; and

(6) district 6, which shall be composed of the counties of Catron, Cibola, McKinley and all of Sandoval county excluding all of townships twelve and thirteen north, ranges one, two, three, four, five and six east and all of townships fourteen, fifteen and sixteen north, ranges four, five and six east.

B. The legislature, in the event of the creation of any new county, shall attach the new county to any of the above districts to which the new county may be contiguous.

C. One member of the state transportation commission shall be appointed from each of the six state transportation commission districts, and the member shall reside in the district from which he is appointed. Change of residence of a state transportation commissioner to a place outside the highway district from which he was appointed shall automatically terminate the term of that commissioner.

Section 29. Section 67-3-6 NMSA 1978 (being Laws 1967, Chapter 266, Section 5, as amended) is amended to read:

"67-3-6. CREATION OF DEPARTMENT OF TRANSPORTATION.--A department of government within the executive branch to be known as the "department of transportation" is established. Except for the powers expressly granted to the state transportation commissioners in Chapter 67, Article 3 NMSA 1978, the department shall exercise all the power, authority and duty granted to the state transportation commission in Chapter 67 NMSA 1978. All references contained in the NMSA 1978, as amended, and which refer to the "state transportation commission" or "commissioners" shall, wherever appropriate, be construed to refer to or to mean the department as designated in this section."

Section 30. Section 67-3-7 NMSA 1978 (being Laws 1967, Chapter 266, Section 6, as amended) is amended to read:

"67-3-7. SECRETARY OF TRANSPORTATION--APPOINTMENT--QUALIFICATIONS--BOND.--

A. The department shall be under the control of an executive officer to be known as the "secretary". The secretary shall have all powers necessary for the efficient management of the department. Except for the powers expressly granted to the state transportation commission by Sections 67-3-5, 67-3-7 and 67-3-23 NMSA 1978 and by Section 67-3-2 NMSA 1978, the secretary shall have all powers granted by law to the state transportation commission or the state transportation commissioners.

B. The secretary shall devote his entire time to his duties and shall receive an annual salary set by the commission. A secretary, during his period of service, shall not hold any other office under the laws of this state or of the United States."

Section 31. Section 67-3-8 NMSA 1978 (being Laws 1967, Chapter 266, Section 7, as amended by Laws 1987, Chapter 344, Section 1 and also by Laws 1987, Chapter 345, Section 1) is amended to read:

"67-3-8. POWERS AND DUTIES OF SECRETARY.--The secretary shall:

A. serve as the chief staff officer of the state transportation commission and shall be responsible to the commission for the operations and management of the work of the department;

B. organize the department in such a manner as to properly conduct the work of the department;

C. establish six highway construction districts with the approval of the state transportation commission. The secretary shall designate a district engineer in each construction district to supervise and manage the operations of the district. The district engineer shall be a professional engineer. The authority and responsibility for the actual construction for all construction projects within the district shall be delegated to

the district engineer. District engineers shall attend state transportation commission meetings;

D. in accordance with the provisions of the Personnel Act, employ such assistants and employees as may be required for the efficient operation of the department, each of whom shall possess all the qualifications that may be prescribed for such position; provided that, notwithstanding the provisions of the Personnel Act, no more than five division directors shall be covered by and subject to the Personnel Act; and

E. observe, administer and enforce the provisions of law now existing or hereafter enacted that pertain to the state highways, the state transportation commission or the department."

Section 32. Section 67-3-10 NMSA 1978 (being Laws 1917, Chapter 38, Section 6) is amended to read:

"67-3-10. MEETINGS--OATHS--SEAL--POLICY.--It is the duty of the state transportation commission to hold meetings at such times and for such periods as it deems essential to the proper carrying out of the provisions of Chapter 67 NMSA 1978. The members shall have power to administer oaths, and the commission shall have a common seal. It is the duty of the commission to consider and determine at its meetings all questions relating to the general policy of the commission and the conduct of the work in general; to receive and consider, at such times as it may elect, the annual report of the secretary; and to act in all matters relating to the recommendations, reports and such other matters as it finds advisable to submit to the governor or to the legislature; provided, however, that any reports or information shall be furnished to the governor by the commission upon his request."

Section 33. Section 67-3-11 NMSA 1978 (being Laws 1917, Chapter 38, Section 20) is amended to read:

"67-3-11. RULE-MAKING POWER.--The state transportation commission is hereby authorized to make all rules and regulations as may be necessary to carry out the provisions of Chapter 67 NMSA 1978."

Section 34. Section 67-3-12 NMSA 1978 (being Laws 1929, Chapter 110, Section 1) is amended to read:

"67-3-12. POWERS AND DUTIES.--In addition to the powers now conferred upon it by law, the state transportation commission shall have the power and authority to:

A. declare abandoned and to close to public traffic all grade crossings of railroads by state highways in cases where grade separations or other adequate

crossings are substituted therefor or where such grade crossings become unnecessary to the public convenience by reason of changes in highway locations;

B. offer and upon compliance with the conditions of such offer to pay rewards for information leading to the arrest and conviction of offenders in cases of theft, defacement or destruction of markers or highway signs, lights or other warning devices placed upon or along highways of this state under the supervision of the state transportation commission and for information leading to the arrest and conviction of offenders or for the return of property in case of theft or unlawful damaging of property under the control of the commission. All such rewards when paid shall be paid from the state road fund upon voucher drawn by the state highway engineer or other authorized officer or agent of the department;

C. prescribe by rules and regulations the conditions under which pipelines, telephone, telegraph and electric transmission lines and ditches may be hereafter placed along, across, over or under all public highways in this state and to forcibly remove or cause to be removed any such pipelines, telephone, telegraph or electric transmission lines or ditches which may hereafter be placed along, across, over or under such public highways in violation of such rules and regulations;

D. employ an attorney to assist and advise the state transportation commission and all of the employees and agents thereof in the discharge of their duties and to appear and represent the interests of the commission or its employees in any case before any court or tribunal in which the official duties, powers, rights or privileges of the commission or any of its employees or agents may be involved or affected and to pay such attorney the reasonable value of his services out of the state road fund;

E. bring and maintain in the name of the state all actions and proceedings deemed necessary by the state transportation commission for the condemnation of rights of way for public highways or for the removal or condemnation of buildings or other improvements that encroach in whole or part upon the rights of way of public highways or for the condemnation of gravel pits or other deposits of materials or supplies suitable for the construction of public highways.

The attorney general of New Mexico shall appear in and prosecute all such cases on behalf of the state upon request of the state transportation commission. All such proceedings shall be conducted in the same manner as other cases for the condemnation of real property. The damages assessed in proceedings brought under the provisions of this section shall be paid out of the state road fund from money furnished for that purpose by cooperative agreement between the state, federal government and the county within which the condemned property is situate or any such governmental bodies or out of money furnished for the construction of the highway in connection with which the condemnation is had, by the county in which the condemned property is situate; provided, however, that if no such money is available, the damages shall be advanced on behalf of said counties out of their money in the state road fund and the state treasurer shall thereafter reimburse the state road fund for the money

advanced out of the next installment of money from motor vehicle license fees accruing to the road fund of the county for which such funds were so advanced; and

F. designate in its discretion one of its employees as acting secretary to act at all times when the secretary is absent from the state capital. The acting secretary, when designated, has the right and is hereby given authority at all times when the secretary is absent from the state capital to sign all federal project statements, federal project agreements and federal vouchers with the same force and effect as if signed by the secretary in person, and the certificate of the acting secretary attached to any federal project statement, federal project agreement or federal voucher to the effect that the secretary was absent from the state capital at the time that the same was so signed by the acting secretary shall be conclusive evidence of the truth of such fact. The acting secretary may also be vested by the state transportation commission with power and authority to act for the secretary in such other matters as the state transportation commission may determine."

Section 35. Section 67-3-14 NMSA 1978 (being Laws 1912, Chapter 54, Section 2, as amended) is amended to read:

"67-3-14. STATE TRANSPORTATION COMMISSION--POWERS AND DUTIES--ROAD FUNDS.--

A. The state transportation commission has charge of all policy matters pertaining to the expenditure of the state road fund in the construction, improvement and maintenance of state highways and bridges in the state.

B. The state transportation commission may also make rules and regulations governing the method of construction, improvement and maintenance of state highways and bridges and compel compliance with the laws, rules and regulations relating to state highways and bridges. The commission shall have no duty to maintain or supervise the maintenance of roads that are not designated state highways or bridges.

C. The secretary shall have authority to expend state road funds and use state forces and equipment in an amount not to exceed ten thousand dollars (\$10,000) for the purpose of restoring and preserving the public safety and welfare in any emergency involving a threat of injury to lives or property within areas under the control of the state or local governmental bodies."

Section 36. Section 67-3-17 NMSA 1978 (being Laws 1967, Chapter 20, Section 2) is amended to read:

"67-3-17. SNOW REMOVAL FROM DESIGNATED SKIING AREA PARKING FACILITIES.--The state transportation commission is hereby authorized and empowered to remove any snow that it deems to be an obstacle to the parking of motor vehicles at any parking area that serves a skiing area. If the parking area is on lands

owned by or leased from the state, municipal, county or federal government, the cost of snow removal shall be borne by the state as in the case of road maintenance. If the parking facilities are on private lands, the person in control of the skiing area shall be liable for the payment of such sum, not less than actual cost, as the state transportation commission decides to be the reasonable value of such snow removal. For the purposes of this section, the phrase "skiing area" shall mean any lands or areas used for the sport of skiing and recognized by the tourism department as a tourist attraction."

Section 37. Section 67-3-19 NMSA 1978 (being Laws 1967, Chapter 165, Section 1) is amended to read:

"67-3-19. DUTY TO REPAIR AND MAINTAIN STATE PARK ROADS, BRIDGES AND PARKING AREAS.--It is the duty of the state transportation commission to repair and maintain the public roads and highways that provide access to state park and recreation areas and to repair and maintain all roads, bridges and parking areas within the boundaries of the state park and recreation areas that will best serve the needs of the general public."

Section 38. Section 67-3-20 NMSA 1978 (being Laws 1909, Chapter 42, Section 5, as amended) is amended to read:

"67-3-20. EL CAMINO REAL--SUPERVISION AND CONTROL.-- The system of highways established by Sections 67-9-2 through 67-9-5 NMSA 1978 shall be under the supervision and control of the state transportation commission, and it shall carry out the provisions at such time as in its judgment is proper."

Section 39. Section 67-3-22 NMSA 1978 (being Laws 1909, Chapter 42, Section 9, as amended) is amended to read:

"67-3-22. STATE TRANSPORTATION COMMISSION--ANNUAL REPORT.--The state transportation commission shall, on or before the first day of January of each year, make a report to the governor of all business transacted by the commission up to and including the thirtieth day of November, showing an itemized statement of money received and disbursed."

Section 40. Section 67-3-23 NMSA 1978 (being Laws 1977, Chapter 251, Section 5, as amended) is amended to read:

"67-3-23. SECRETARY OF TRANSPORTATION--APPOINTMENT.--The governor shall appoint a secretary of transportation, with the approval of the state transportation commission and subject to the advice and consent of the senate. The secretary shall be in general charge of the work of the commission and be its active executive representative and shall serve as the representative of the department on the executive cabinet as provided for in the Executive Reorganization Act. The secretary shall take the usual oath and execute in favor of the state a bond in the sum of fifty

thousand dollars (\$50,000), of like character, with like sureties and for like purposes, to be approved and filed as prescribed in the Surety Bond Act. The premium of the bond shall be paid out of the state road fund."

Section 41. Section 67-3-24 NMSA 1978 (being Laws 1917, Chapter 38, Section 5) is amended to read:

"67-3-24. EMPLOYEES--APPOINTMENT--COMPENSATION.--The secretary, with the consent and approval of the state transportation commission, may appoint and fix the compensation of assistant engineers and clerks and employ such other help as may be necessary to the proper conduct of the work of the commission under the provisions of Chapter 67 NMSA 1978. All appointees on entering upon their duties shall first take the prescribed oath of office if so required by the commission."

Section 42. Section 67-3-26 NMSA 1978 (being Laws 1917, Chapter 38, Section 7, as amended) is amended to read:

"67-3-26. DUTIES OF SECRETARY--DISBURSEMENT OF STATE ROAD FUND.--The secretary shall have charge of all records of the state transportation commission; shall keep a record of all proceedings and orders pertaining to the business of his office and of the state transportation commission; and shall keep on file copies of all plans, specifications and estimates prepared by his office. He shall cause to be made and kept in his office a general highway plan of the state. He shall prepare or cause to be prepared or call upon the county surveyor or the county highway superintendent to furnish a map showing all of the main highways of the several counties of the state and shall, under the direction of the state transportation commission, select and designate the highways that should comprise a system of state roads, which shall, as nearly as practicable, be such as will best serve the traffic needs and develop the resources of the state. Upon its adoption by the state transportation commission, the system of state roads so designated shall be improved as soon thereafter as practicable under the provisions of Chapter 67 NMSA 1978 and such other provisions as the legislature may enact therefor. The system of state roads so designated may be changed or added to from time to time by the secretary subject to the approval of the state transportation commission. The secretary shall collect information with reference to the mileage, character and condition of the highways and bridges in the several counties of the state and shall investigate and determine the methods of road construction and maintenance best adapted to the various sections of the state, having due regard to topography, natural conditions, the availability of road building materials, the prevailing traffic conditions and the ability of the counties to meet the cost of building and maintaining roads and bridges therein. He may, at all reasonable times, be consulted by county and other officials having authority over highways and bridges relative to any question affecting such highways and bridges, and he may in like manner call on county road officials and county surveyors for any information or maps relative to the location, character and condition of the highways and bridges within their jurisdiction or control. Any such official who fails to supply such information when so called upon is guilty of a misdemeanor and upon conviction thereof

shall be subject to a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100). He shall determine the character of and have supervision over the construction, repair and maintenance of all state roads and bridges improved under the provisions of Chapter 67 NMSA 1978 and shall prepare or approve all plans and specifications and estimates therefor. He shall report the proceedings of his office annually to the state transportation commission at such time as it may designate. All money in the state road fund shall be expended only upon itemized vouchers approved by the secretary, filed with the department of finance and administration, and warrants drawn by the secretary of finance and administration upon the state treasurer."

Section 43. Section 67-3-29 NMSA 1978 (being Laws 1973, Chapter 143, Section 1) is amended to read:

"67-3-29. DEPARTMENT PERSONNEL--COUNTY AND MUNICIPAL ROAD TECHNICAL ASSISTANCE.--The state transportation commission may establish and maintain within the department qualified technical personnel including engineers, designers and survey crews to assist counties and municipalities in the engineering, design and other technical aspects of county and municipal road projects."

Section 44. Section 67-3-30 NMSA 1978 (being Laws 1929, Chapter 100, Section 3) is amended to read:

"67-3-30. COUNTIES AUTHORIZED TO CONTRACT WITH COMMISSION--INSUFFICIENT FUNDS--EXEMPTION FROM BATEMAN ACT.--The boards of county commissioners of the respective counties of this state are hereby authorized to enter into cooperative agreements with the state transportation commission in accordance with the provisions of Sections 67-3-28 and 67-3-30 NMSA 1978. An agreement shall bind the state and a county becoming a party thereto and shall not be invalidated by reason of the fact that a participating county may not have or collect during the current year sufficient money to pay the indebtedness of said county incurred under such contract for said current year. A contract shall be exempted from the provisions of Section 6-6-11 NMSA 1978."

Section 45. Section 67-3-31 NMSA 1978 (being Laws 1917, Chapter 38, Section 8) is amended to read:

"67-3-31. COUNTY ROADS--IMPROVEMENT OR CONSTRUCTION--STATE AID--DUTIES OF STATE HIGHWAY ENGINEER.--Whenever the board of county commissioners of any county desires that any main traveled road or roads in such county included among those adopted by the state transportation commission as a system of state roads shall be improved or constructed under the provisions of Chapter 67 NMSA 1978, written application shall be made by the board of county commissioners to the secretary for such improvement or construction and for state aid therefor. If the board of county commissioners of any county fails to apply for state aid during the year for which such aid is available, that county shall thereby forfeit its right to its portion of

state aid for that year, and the funds apportioned to that county for the year shall remain in and be a part of the state road fund for the succeeding year. If upon receipt of such application the state transportation commission is satisfied, after investigation, that the proposed improvement should be made or undertaken and that the county will be able to pay its portion of the cost and that state funds will be available to pay the state's portion of the cost, it may approve the same and undertake such work of improvement in accordance with the provisions of Chapter 67 NMSA 1978. The secretary or one of his assistants shall proceed to view the road or part thereof proposed to be improved and make all surveys, plans, specifications and estimates of cost for its construction out of such materials as may be decided upon by the secretary; provided, that whenever in the judgment of the state transportation commission it is desirable to proceed with the improvement of any road in the system of state roads, for the improvement of which the county commissioners of the county in which the same is located shall have failed or declined to make application as provided in this section, it is lawful for the secretary to proceed with the improvement of any such road without application from the board of county commissioners and to pay the entire cost of such improvement from the portion of the state road fund made available under the provisions of Chapter 67 NMSA 1978 for expenditure wholly within the discretion of the state transportation commission and from the state apportionment of funds under the act of congress referred to in Section 67-3-33 NMSA 1978."

Section 46. Section 67-3-32 NMSA 1978 (being Laws 1983, Chapter 38, Section 1, as amended) is amended to read:

"67-3-32. COOPERATIVE AGREEMENTS--PREFERENCE.--In entering into cooperative agreements pursuant to Section 67-3-28 NMSA 1978, the state transportation commission shall give preference to political subdivisions of this state if the subdivision contributes an amount equal to at least twenty-five percent of the project cost."

Section 47. Section 67-3-33 NMSA 1978 (being Laws 1917, Chapter 38, Section 19, as amended) is amended to read:

"67-3-33. ASSENT TO FEDERAL RURAL POST ROAD ACTS--PLEDGE OF STATE'S GOOD FAITH--EXPENDITURES.--The legislature of New Mexico hereby assents to the provisions of the act of congress approved July 11, 1916 entitled "an act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes", 39 U. S. Statutes at Large, page three hundred fifty-five, and all acts amendatory thereof and supplementary thereto, and the legislature of New Mexico hereby assents to the provisions of the act of congress approved November 9, 1921 entitled "an act to amend the act entitled 'an act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes', approved July eleven, nineteen hundred and sixteen as amended and supplemented and for all other purposes", 42 U. S. Statutes at Large, page two hundred twelve and all acts amendatory thereof and supplementary thereto. The state transportation commission is hereby authorized to enter into all contracts and agreements with the

United States government relating to the construction and maintenance of rural post roads under the provisions of the said acts of congress, to submit such scheme or program of construction and maintenance as may be required by the secretary of agriculture and to do all other things necessary fully to carry out the cooperation contemplated and provided by the acts. The good faith of the state is hereby pledged to make available funds sufficient to equal the sum apportioned to the state by or under the United States government during each of the five years for which federal funds are appropriated by the acts, to maintain the roads constructed under the provision of the acts and to make adequate provision for carrying out such maintenance. All money accruing to the state road fund and available for expenditure in the construction and maintenance of highways and all federal funds apportioned to this state under the acts of congress shall be expended upon the highways comprising the system of state roads provided for by Chapter 67 NMSA 1978."

Section 48. Section 67-3-34 NMSA 1978 (being Laws 1925, Chapter 18, Section 1) is amended to read:

"67-3-34. FEDERAL AID ROAD PROJECT--DOCUMENT EXECUTION.--Whenever a federal aid road project has been approved by the state transportation commission, the secretary is hereby authorized to execute and sign for and on behalf of the commission the project agreement and modifications thereof and all required documents in connection with such project. The agreements, modifications and documents so executed and signed shall be binding upon the state and upon the department to the same extent as if they had been signed by every member of the commission."

Section 49. Section 67-3-35 NMSA 1978 (being Laws 1925, Chapter 18, Section 2) is amended to read:

"67-3-35. AUDITOR--APPOINTMENT--DUTIES--BOND.--The secretary, by and with the approval of the state transportation commission, may appoint some suitable person who shall be authorized to sign the name of said engineer to all vouchers as he designates from time to time in writing for the disbursement of funds. The appointee shall take the oath of office required of other employees of the department and shall execute in favor of the state a surety company bond in the sum of fifty thousand dollars (\$50,000), subject to approval of the state transportation commission, conditional for the faithful performance of his duties, the premium of the bond to be paid out of the state road fund."

Section 50. Section 67-3-36 NMSA 1978 (being Laws 1963, Chapter 249, Section 1) is amended to read:

"67-3-36. ACQUISITION OF RIGHTS OF WAY--DUTY OF COUNTY AND DISTRICT ATTORNEY.--Except as provided in Section 67-3-37 NMSA 1978, the rights of way deemed necessary by the state transportation commission for highways

constructed or reconstructed under the supervision of the state transportation commission shall be acquired by the county through which such highways shall or do pass by donation, agreement, exchange, by the exercise of the power of eminent domain or otherwise, in the manner provided by law for acquiring property or property rights for public uses. It is the duty of the district attorney for the county wherein such property or property rights are situate to commence and prosecute an action to acquire all such property or property rights upon request of the board of county commissioners or the state transportation commission."

Section 51. Section 67-3-37 NMSA 1978 (being Laws 1963, Chapter 249, Section 2) is amended to read:

"67-3-37. ACQUISITION OF RIGHTS OF WAY FOR INTERSTATE SYSTEM--PRIMARY SYSTEM--SECONDARY SYSTEM--PAYMENT.--

A. In the acquisition of property or property rights deemed necessary by the state transportation commission for construction or reconstruction of the national system of interstate and defense highways, more commonly known as the "federal aid interstate system", the "federal aid primary system" and the "federal aid secondary system", the state transportation commission shall, at its costs, acquire the property or property rights directly, by either donation, agreement, exchange, condemnation or otherwise, without recourse to the county.

B. The secretary is authorized to make full payment directly to the owner or party having an interest in the property or property interests involved, in the manner prescribed by law, or may reimburse the county for the actual costs."

Section 52. Section 67-3-38 NMSA 1978 (being Laws 1963, Chapter 249, Section 3) is amended to read:

"67-3-38. ACTION BY STATE TRANSPORTATION COMMISSION.--When the state transportation commission secures property or property rights required for the construction or reconstruction of the federal aid interstate system, the federal aid primary system or the federal aid secondary system, it is the duty of the district attorney for the county wherein such property or property rights are situate to aid and assist the state transportation commission in all matters pertaining thereto and to be present and assist at any trial involving the property or property rights required upon written request of the secretary or the head of the legal section of the department."

Section 53. Section 67-3-40 NMSA 1978 (being Laws 1919, Chapter 99, Section 13) is amended to read:

"67-3-40. CONTROL OF STATE HIGHWAYS--MAINTENANCE COSTS.--The state transportation commission shall have full control over all roads designated by the commission as state highways or created as state highways by acts of the legislature.

The costs of maintenance thereof shall be paid by the state, provided, that if at any time the money in the state road fund available for improvement or maintenance of all such state highways in the state shall not be sufficient for such purposes, the state transportation commission shall certify to the respective boards of county commissioners the certain sections of the highways in the counties, proportionately to such deficiency, which shall be improved and maintained wholly by the respective counties until sufficient funds are provided in the state road fund to enable the state to take over and maintain them as state highways."

Section 54. Section 67-3-41 NMSA 1978 (being Laws 1917, Chapter 38, Section 14) is amended to read:

"67-3-41. HIGHWAY MAINTENANCE CONTRACTS WITH COUNTIES--FAILURE OF COUNTY TO MAINTAIN--UTILITY LINES.--All state highways constructed and improved under the provisions of Chapter 67 NMSA 1978 shall be maintained by the state transportation commission, but not more than fifty percent of the cost of such maintenance shall be paid by the state and not less than fifty percent shall be paid by the counties. The state transportation commission may, however, contract with the board of county commissioners of any county to maintain any state highway or highways therein in accordance with standards prescribed by the secretary and subject to supervision and inspection by him, and if the board of county commissioners of any county so contracting to maintain such highways shall fail, neglect or refuse properly to execute such work of maintenance, the secretary, after reasonable notice, may have such work of maintenance done and charge the county's portion of the cost to the allotment due the county from the state road fund for the year in which work is done. No pipe lines, poles or telephone or electric transmission lines or railways, authorized to be placed on or along roads constructed or improved under the provisions of Chapter 67 NMSA 1978 shall be located except in accordance with rules and regulations prescribed therefor by the state transportation commission."

Section 55. Section 67-3-42 NMSA 1978 (being Laws 1917, Chapter 38, Section 13) is amended to read:

"67-3-42. BRIDGES CONSIDERED PART OF HIGHWAY.--For the purposes of Chapter 67 NMSA 1978, necessary bridges, culverts and other appertaining structures on any highway shall be considered a part of such highway. Not more than fifty percent of the cost of all construction or improvement of highways, under the provisions of Chapter 67 NMSA 1978, shall be paid by the state and not less than fifty percent by the county in which such work is done, except where such work is done by the state transportation commission without the use of county funds."

Section 56. Section 67-3-46 NMSA 1978 (being Laws 1939, Chapter 91, Section 1) is amended to read:

"67-3-46. RENTAL OF EQUIPMENT--BIDS NOT REQUIRED IN EMERGENCIES--BID PROCEDURE--RESTRICTIONS.--In cases of emergency where a state highway is rendered impassable for vehicular traffic by reason of fire, flood, storm or any other unusual condition and when it is necessary to take emergency action to reestablish the highway to a condition to render it passable to traffic, and equipment owned by the state transportation commission suitable for such purpose is not immediately available, the secretary, subject to approval of the state transportation commission, may rent equipment for such purpose at a reasonable rental rate without advertising for bids. In all other cases, the secretary shall advertise for bids before renting equipment and shall rent such equipment from the party submitting the lowest satisfactory bid. Such advertisement for bids shall be in accordance with such rules as may be adopted therefor by the state transportation commission, and bids shall be on such forms and in such manner and accompanied by such guarantee as may be prescribed by the commission."

Section 57. Section 67-3-49 NMSA 1978 (being Laws 1929, Chapter 108, Section 1, as amended) is amended to read:

"67-3-49. CLAIMS OF HIGHWAY CONTRACTOR'S CREDITORS--STATE HIGHWAY SUSPENSE FUND.--Whenever, after the completion of any contract for the construction, repair or maintenance of any public highway under the supervision of the state transportation commission and the final acceptance of the work done thereunder, there now is or hereafter may be funds in a sum of less than five hundred dollars (\$500) remaining in the hands of the state treasurer, properly payable under said contract, and claims of alleged creditors of such contractor have been filed with the state transportation commission against such funds, then, and at the election of the state transportation commission and upon an appropriate voucher issued by the proper officer of said commission specifying the project number of such contract and the name of such contractor and the names of all creditors who have filed such claims with said commission and the amounts of all claims so filed, the secretary of finance and administration shall issue a warrant for the transfer of the full amount of said fund to a special account to be known as the "state highway suspense fund" and shall specify upon his records the amount of money so transferred, the project number of said contract, the name of said contractor and the names and amounts of the claims of such creditors. Upon receipt of such warrant, the state treasurer shall transfer such funds to the state highway suspense fund in accordance with said warrant."

Section 58. Section 67-3-50 NMSA 1978 (being Laws 1929, Chapter 108, Section 2) is amended to read:

"67-3-50. ACCOUNT CLOSING--NONLIABILITY.--Upon transfer of the funds as provided in Section 67-3-49 NMSA 1978, the state transportation commission shall close its book of account upon such project and shall have no further responsibility in connection with such fund or with the payment of the balance of money remaining to the credit of said contractor upon said contract."

Section 59. Section 67-3-54 NMSA 1978 (being Laws 1943, Chapter 7, Section 1) is amended to read:

"67-3-54. FLIGHT STRIPS, AIRPORT AND ACCESS ROADS--CONTRACTS WITH FEDERAL GOVERNMENT--SECRETARY.--The state transportation commission is hereby authorized to enter into and make agreements with the federal government, or any agency, bureau or commission thereof, providing for the construction and maintenance of flight strips for the landing and launching of aircraft adjacent to or in the vicinity of public highways, for the construction and maintenance of airports or the construction and maintenance of access roads to flight strips, airports, bombing ranges, target ranges, federal reservations or to any industry or location deemed necessary to the war effort. Whenever a project for the construction and maintenance of a flight strip, an airport or an access road has been approved by the state transportation commission, the secretary is hereby authorized to execute and sign on behalf of the commission the project agreement and modifications thereof and all other documents in connection with such project. Such agreements, modifications thereof and documents, when so executed and signed, shall be binding upon the state to the same extent as if they had been signed by every member of the state transportation commission."

Section 60. Section 67-3-55 NMSA 1978 (being Laws 1943, Chapter 7, Section 2) is amended to read:

"67-3-55. FLIGHT STRIPS, AIRPORTS AND ACCESS ROADS--BIDDING PROCEDURES--BOND.--The state transportation commission may construct, reconstruct or maintain any flight strips, any airport or access road by work done with its own forces. In all other cases, it is the duty of the secretary to let the work on contract, after taking bids therefor, subject to the approval of the state transportation commission. The taking of bids therefor shall be in accordance with such rules as may be adopted by the commission. The secretary may reject any or all bids if they are unbalanced or for any other good cause, but otherwise he shall award the contract to the lowest responsible bidder. The successful bidder shall be required to furnish satisfactory bond in such amount as may be determined by the state transportation commission pledged to the faithful performance by the bidder of the terms of his contract."

Section 61. Section 67-3-56 NMSA 1978 (being Laws 1943, Chapter 7, Section 3, as amended) is amended to read:

"67-3-56. STATE TRANSPORTATION COMMISSION--POWER TO ACQUIRE LAND FOR FLIGHT STRIP, AIRPORT OR ACCESS THERETO.--The state transportation commission is hereby authorized and empowered to acquire by purchase, condemnation, gift or easement any and all lands or property necessary for the construction, maintenance and use of a flight strip for the landing or launching of aircraft adjacent to or in the vicinity of a public highway, for the construction, maintenance and use of an airport, or any access road. The secretary is authorized to issue his voucher for the payment to the owner of any or all lands required for such

purpose in the sum agreed upon with such owners or as may be determined by appraisal and, when presented with such voucher by the secretary, it is the duty of the secretary of finance and administration to issue a warrant in such amount, and the state treasurer shall pay the same out of the state road fund."

Section 62. Section 67-3-57 NMSA 1978 (being Laws 1947, Chapter 118, Section 1) is amended to read:

"67-3-57. ANNUAL APPROPRIATION--PURPOSES.--There is hereby appropriated for each of the thirty-fifth and thirty-sixth fiscal years the sum of nineteen million dollars (\$19,000,000) or so much thereof as is necessary for the purpose of carrying out the provisions of the laws relating to the issue, sale and payment of state highway debentures and the interest thereon; for the construction, maintenance and improvement of public highways under the direction of the state transportation commission; for the purchase of equipment therefor; for cooperation with the United States in the construction of roads under the federal aid road law and other laws; and for the payment of salaries and other expenses incurred by the state transportation commission pursuant to law.

The appropriations shall be paid only out of the money in the state treasury to the credit of the state road fund and that may be placed to the credit of said fund, special road funds and funds from time to time set aside for the payment of the principal of and interest on state highway debentures and money received by the state treasurer from allotments of appropriations by congress for road construction or other purposes, from sales of state highway debentures, from special road tax levies and other money provided by law to be expended under the direction of the state transportation commission."

Section 63. Section 67-3-58 NMSA 1978 (being Laws 1947, Chapter 118, Section 2) is amended to read:

"67-3-58. ALLOTMENT OF APPROPRIATION.--From the money appropriated in Section 67-3-57 NMSA 1978, the state treasurer shall set aside each month out of the funds prescribed by law for the payment thereof a sufficient sum to pay the interest accrued each month on each series of state highway debentures then outstanding and, during the twelve months next preceding the maturity of each series of such debentures, he shall set aside from said funds sufficient money to provide for the payment of the principal thereof at maturity. The money so set aside shall be disbursed by the state treasurer only for the payment of the principal and interest of the series of the state highway debentures for which the money is set aside. The remainder of the money appropriated in Section 67-3-57 NMSA 1978 shall be disbursed upon the order of the state transportation commission or its duly authorized agent in the manner provided by law for disbursement of money in the state road fund."

Section 64. Section 67-3-59.1 NMSA 1978 (being Laws 1989, Chapter 157, Section 1, as amended) is amended to read:

"67-3-59.1. STATE HIGHWAY DEBENTURES--ISSUANCE--LIMITS--APPROVAL--COUPONS.--

A. In order to provide funds to finance state highway projects, including state highway projects that are required for the waste isolation pilot project and are eligible for federal reimbursement or payment as authorized by federal legislation, the state transportation commission is authorized, subject to the limitations of this section, to issue bonds from time to time, payable from federal funds not otherwise obligated that are paid into the state road fund and the proceeds of the collection of taxes and fees that are required by law to be paid into the state road fund and not otherwise pledged solely to the payment of outstanding bonds and debentures.

B. Except as provided in Subsections C and D of this section, the total aggregate outstanding principal amount of bonds issued from time to time pursuant to this section, secured by or payable from federal funds not otherwise obligated that are paid into the state road fund and the proceeds from the collection of taxes and fees required by law to be paid into the state road fund, shall not, without additional authorization of the state legislature, exceed one hundred fifty million dollars (\$150,000,000) at any given time, subject to the following provisions:

(1) the total aggregate outstanding principal amount of bonds issued for state highway projects that are required for the waste isolation pilot project and are eligible for federal reimbursement or payment as authorized by federal legislation shall not exceed one hundred million dollars (\$100,000,000); and

(2) the total aggregate outstanding principal amount of bonds issued for state highway projects other than state highway projects that are required for the waste isolation pilot project and are eligible for federal reimbursement or payment as authorized by federal legislation shall not exceed fifty million dollars (\$50,000,000).

C. Upon specific authorization and appropriation by the legislature, and subject to the limitations of Subsection D of this section, an additional amount of bonds may be issued pursuant to this section for state highway projects, to be secured by or payable from taxes or fees required by law to be paid into the state road fund and federal funds not otherwise obligated that are paid into the state road fund, and, as applicable, taxes or fees required by law to be paid into the highway infrastructure fund, as follows:

(1) an aggregate outstanding principal amount of bonds, not to exceed six hundred twenty-four million dollars (\$624,000,000), for major highway infrastructure projects for which the department has, prior to January 1, 1998, submitted or initiated the process of submitting a plan to the federal highway administration for innovative financing pursuant to 23 USCA Sections 122 and 307;

(2) an aggregate outstanding principal amount of bonds, not to exceed one hundred million dollars (\$100,000,000), for state highway projects that are required for the waste isolation pilot project and are eligible for federal reimbursement; and

(3) an aggregate outstanding principal amount of bonds, not to exceed four hundred million dollars (\$400,000,000), for other state highway projects.

D. The total amount of bonds that may be issued by the state transportation commission for state highway projects pursuant to Subsection C of this section shall not exceed a total aggregate outstanding principal amount of:

(1) three hundred million dollars (\$300,000,000) prior to July 1, 1999;

(2) six hundred million dollars (\$600,000,000) from July 1, 1999 through June 30, 2000;

(3) nine hundred million dollars (\$900,000,000) from July 1, 2000 through June 30, 2001; and

(4) one billion one hundred twenty-four million dollars (\$1,124,000,000) after June 30, 2001.

E. The state transportation commission may issue bonds to refund other bonds issued pursuant to this section by exchange or current or advance refunding.

F. Each series of bonds shall have a maturity of no more than twenty-five years from the date of issuance. The state transportation commission shall determine all other terms, covenants and conditions of the bonds; provided that the bonds shall not be issued pursuant to this section unless the state board of finance approves the issuance of the bonds and the principal amount of and interest rate or maximum net effective interest rate on the bonds.

G. The bonds shall be executed with the manual or facsimile signature of the chairman of the state transportation commission, countersigned by the state treasurer and attested to by the secretary of the state transportation commission, with the seal of the state transportation commission imprinted or otherwise affixed to the bonds.

H. Proceeds of the bonds may be used to pay expenses incurred in the preparation, issuance and sale of the bonds and, together with the earnings on the proceeds of the bonds, may be used to pay rebate, penalty, interest and other obligations relating to the bonds and the proceeds of the bonds under the Internal Revenue Code of 1986, as amended.

I. The bonds may be sold at a public or negotiated sale at, above or below par or through the New Mexico finance authority. A 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 transportation commission or the New Mexico finance authority shall also procure the services of any financial advisor or bond counsel through a competitive proposal process. If sold at public sale, a notice of the time and place of sale shall be published in a newspaper of general circulation in the state, and in any other newspaper determined in the resolution authorizing the issuance of the bonds, once each week for two consecutive weeks prior to the date of sale. The bonds may be purchased by the state treasurer or state investment officer.

J. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bond for value.

K. The bonds shall be legal investments for a person or board charged with the investment of public funds and may be accepted as security for a deposit of public money and, with the interest thereon, are exempt from taxation by the state and a political subdivision or agency of the state.

L. Any law authorizing the imposition or distribution of taxes or fees paid into the state road fund or the highway infrastructure fund or that affects those taxes and fees shall not be amended or repealed or otherwise directly or indirectly modified so as to impair outstanding bonds secured by a pledge of revenues from those taxes and fees paid into the state road fund or the highway infrastructure fund, unless the bonds have been discharged in full or provisions have been made for a full discharge. In addition, while any bonds issued by the state transportation commission pursuant to the provisions of this section remain outstanding, the powers or duties of the commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holder of such bonds.

M. In contracting for state highway projects to be paid in whole or in part with proceeds of bonds authorized by this section, the department shall require that any sand, gravel, caliche or similar material needed for the project shall, if practicable, be mined from state lands. Each contract shall provide that the contractor notify the commissioner of public lands of the need for the material and that, through lease or purchase, the material shall be mined from state lands if:

(1) the material needed is available from state lands in the vicinity of the project;

(2) the commissioner determines that the lease or purchase is in the best interest of the state land trust beneficiaries; and

(3) the cost to the contractor for the material, including the costs of transportation, is competitive with other available material from non-state lands.

N. Bonds issued pursuant to this section shall be paid solely from federal funds not otherwise obligated and taxes and fees deposited into the state road fund and, as applicable, the highway infrastructure fund, and shall not constitute a general obligation of the state."

Section 65. Section 67-3-60 NMSA 1978 (being Laws 1963, Chapter 114, Section 1, as amended) is amended to read:

"67-3-60. BYPASSES AND RELOCATION PROJECTS--EXPENDITURE OF HIGHWAY FUNDS--PURPOSE.--The purpose of Sections 67-3-60 and 67-3-61 NMSA 1978 is to foster and insure the correlation of state highway construction programs closely affecting smaller municipalities and unincorporated communities with the future economic growth, livelihood, development, safety and general welfare of the communities by limiting the use of public funds for the construction of highway bypasses or relocation projects diverting traffic and commerce from existing state highway routes through the communities in accordance with the provisions of all existing agreements between a municipality or county and the state transportation commission relating to obtaining the consent of the municipality or county pursuant to the provisions of Section 67-3-61 NMSA 1978."

Section 66. Section 67-3-61 NMSA 1978 (being Laws 1963, Chapter 114, Section 2, as amended) is amended to read:

"67-3-61. LIMITATION OF EXPENDITURES OF HIGHWAY FUNDS FOR CONSTRUCTION OF HIGHWAY BYPASSES.--No expenditure or contract for the expenditure of state public funds for purposes of construction of highway bypasses or highway relocation projects diverting public motor vehicle travel from a previously existing highway route shall be made that violates the provisions of an existing agreement between a municipality or county and the state transportation commission relating to obtaining the consent of the municipality or county pursuant to the provisions of this section. An existing agreement between a municipality or county and the state transportation commission may be amended or revised by mutual consent of the parties to the agreement. Once authority is given by the governing authority and the state transportation commission has affirmatively acted in reliance upon the expressed approval, public funds may be expended and contracts executed despite subsequent withdrawal of approval by the governing authority."

Section 67. Section 67-3-63 NMSA 1978 (being Laws 1973, Chapter 21, Section 2) is amended to read:

"67-3-63. CONSTRUCTION AND MAINTENANCE OF FOOTPATHS, BICYCLE LANES AND BRIDLE PATHS--EXPENDITURE OF FUNDS AUTHORIZED.--

A. The state transportation commission is authorized to expend as necessary matching state road funds and federal aid highway funds administered by the department for the construction and maintenance of footpaths, bridle paths or bicycle lanes along and across state, county and municipal roads, streets or highways.

B. In administering Sections 67-3-62 and 67-3-63 NMSA 1978, the state transportation commission shall promulgate regulations setting forth guidelines by which the state transportation commission shall determine whether the establishment of any proposed bicycle lanes, footpaths or bridle paths is contrary to public safety or the cost thereof is disproportionate to the need or probable usage within the meaning of Section 67-3-62 NMSA 1978. The commission shall recommend construction standards for footpaths, bicycle lanes and bridle paths and shall provide a uniform system of signs that shall apply to all such paths or lanes under the jurisdiction of the commission and all counties and municipalities. The commission may restrict the use of footpaths, bicycle lanes or bridle paths under its jurisdiction to pedestrian, equestrian or nonmotorized vehicle use.

C. As used in this section, "bicycle lane" means a publicly owned and maintained paved path, way or trail designated and signed as a bicycle route, and "bridle path" includes equestrian trails or ways.

D. In the event that any of the provisions of this section or of Section 67-3-62 NMSA 1978 conflict with provisions of federal law or regulations relating to highway construction funds and such conflict jeopardizes the receipt of funds by the state, then the conflicting provisions of the specified sections of state law shall be suspended and not effective."

Section 68. Section 67-3-70 NMSA 1978 (being Laws 1975, Chapter 343, Section 4, as amended) is amended to read:

"67-3-70. USE OF APPROPRIATED FUNDS.--The department may expend such portion of its appropriated funds as it deems necessary to effectuate the purposes of the Public Mass Transportation Act."

Section 69. Section 67-3-72 NMSA 1978 (being Laws 1997, Chapter 52, Section 2) is amended to read:

"67-3-72. TRANSPORTATION BONDS.--

A. The state transportation 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 a political subdivision of the state.

B. The proceeds from the sale of transportation bonds shall be used solely for the 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 70. Section 67-3-73 NMSA 1978 (being Laws 1997, Chapter 52, Section 3) is amended to read:

"67-3-73. TRANSPORTATION BONDS--TERMS.--Transportation bonds issued by the state transportation 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 71. Section 67-3-74 NMSA 1978 (being Laws 1997, Chapter 52, Section 4) is amended to read:

"67-3-74. REFUNDING BONDS.--

A. Transportation bonds issued pursuant to the provisions of Section 67-3-72 NMSA 1978 that are outstanding may be refunded at any time by the state transportation 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 72. Section 67-3-75 NMSA 1978 (being Laws 1997, Chapter 52, Section 5) is amended to read:

"67-3-75. TRANSPORTATION BONDS ELIGIBLE FOR INVESTMENT.--
Transportation bonds issued by the state transportation 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. The 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. Bonds shall not be eligible for investment or deposit by or with the state or 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 an investment without resort to a collateral guarantee."

Section 73. Section 67-3-76 NMSA 1978 (being Laws 1997, Chapter 52, Section 6) is amended to read:

"67-3-76. TRANSPORTATION BONDS--EXEMPTION FROM TAXATION.--The construction, operation and maintenance of a transportation project by the state transportation 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 74. Section 67-4-4 NMSA 1978 (being Laws 1921, Chapter 135, Section 2, as amended) is amended to read:

"67-4-4. COUNTY ROAD CONTRACTS WITH STATE TRANSPORTATION COMMISSION.--The board of county commissioners of any county in this state may enter into a contract with the state transportation commission by which all or any part of the work of construction and maintenance of county roads and bridges and the purchasing of equipment, materials and supplies shall be under the direction and control of the state transportation commission and subject to the limitations of Sections 67-4-3 through 67-4-16 NMSA 1978, and such board of county commissioners shall draw warrants payable out of the county road and bridge fund to pay for the same, upon itemized vouchers or estimates certified by the secretary.

In the event a county has inadequate equipment and machinery to grade and maintain county roads, upon request by the board of county commissioners and at such times as state equipment and machinery are available in the vicinity and not in use for state purposes, the state transportation commission is authorized to furnish the required equipment and machinery with the operators and personnel required to perform such work in consideration of the actual cost of the gasoline, oil and wages of such operators and personnel involved in the work performed."

Section 75. Section 67-4-7 NMSA 1978 (being Laws 1921, Chapter 135, Section 5) is amended to read:

"67-4-7. DISBURSEMENTS FROM ROAD FUND--STATE TRANSPORTATION COMMISSION PLAN.--In those counties where the state transportation commission

plan is adopted, the county road and bridge funds shall only be paid out upon itemized bills or estimates rendered and approved by the secretary or his assistant showing in detail the time, place and character of work done or the supplies or materials purchased and received for county road and bridge purposes by warrants drawn by the board of county commissioners on the county road and bridge fund."

Section 76. Section 67-4-10 NMSA 1978 (being Laws 1921, Chapter 135, Section 9) is amended to read:

"67-4-10. BUDGET CONTENTS--LIMITATIONS.--The budget provided for in Section 67-4-9 NMSA 1978 shall provide for engineering, supervision, superintending, automobile travel expenses and other overhead expenses and for the compensation of county road superintendents in counties where the county road superintendent plan is adopted, for such overhead and other expenses of the state transportation commission in counties where the state transportation commission contract plan is adopted and for the compensation of road supervisors where the road supervisor plan is adopted. The total expenditures for all the foregoing purposes in any one fiscal year shall not exceed ten percent of the total county road and bridge budget up to and including fifty thousand dollars (\$50,000) and five percent of the budget in excess of fifty thousand dollars (\$50,000) and up to and including seventy-five thousand dollars (\$75,000) and two and one-half percent of the budget in excess of seventy-five thousand dollars (\$75,000)."

Section 77. Section 67-4-12 NMSA 1978 (being Laws 1921, Chapter 135, Section 11, as amended) is amended to read:

"67-4-12. RIGHTS OF WAY--ROAD LOCATION CHANGES.--

A. Rights of way deemed necessary by the board of county commissioners for new roads or changes in location in roads shall be acquired by the board of county commissioners by donation by the owner, by payment of a price agreed upon by the owner and the board of county commissioners or by the exercise of the power of eminent domain in the manner provided by law for acquiring property for public use. No change of location of any portion of a state highway or road construction with federal or state aid shall be made without the approval of the state transportation commission.

B. Future rights of way may be designated without immediate acquisition if:

(1) the changes in the county highway map due to designation of a future right of way are posted at the county courthouse of the respective county;

(2) persons who may be adversely affected are notified of the future right of way designation and the estimated period of time that may elapse before acquisition;

(3) a hearing is provided for all interested persons; and

(4) the county highway map, as amended, is filed with the state transportation commission."

Section 78. Section 67-4-13 NMSA 1978 (being Laws 1921, Chapter 135, Section 12) is amended to read:

"67-4-13. ROAD MAINTENANCE--INSUFFICIENCY OF STATE

FUNDS.--All county roads and bridges shall be maintained at the expense of the respective counties. All roads, and bridges upon roads, that have been declared to be a state highway by acts of the legislature or resolution of the state transportation commission shall be maintained at the expense of the state, provided, that whenever there are not sufficient funds available in the state road fund for maintenance of all state highway mileage in any county, the state transportation commission shall certify to the board of county commissioners of the county the sections of highways that it is unable to maintain at state expense, and these sections shall thereafter be maintained at the expense of the county until such time as there are state funds available to maintain them."

Section 79. Section 67-8-13 NMSA 1978 (being Laws 1939, Chapter 30, Section 2) is amended to read:

"67-8-13. WIRING ADJOINING HIGHWAY STRUCTURES--PERMIT REQUIRED--APPLICATION.--It is unlawful for any person, company or corporation to place or cause to be placed any conduit, wires or cables across, upon, attached to or upon the highway right of way parallel to and within twenty-five feet of any state highway bridge or structure except pursuant to a permit obtained from the state transportation commission and upon compliance with reasonable conditions and requirements specified in such permit. The state transportation commission is authorized and empowered to prepare application and permit forms for such purposes."

Section 80. Section 67-8-16 NMSA 1978 (being Laws 1959, Chapter 310, Section 2) is amended to read:

"67-8-16. DEFINITIONS.--As used in Sections 67-8-15 through 67-8-21 NMSA 1978:

A. "utility" means publicly, privately and cooperatively owned utilities, without distinction, for the rendition of water, electric power, sanitary sewer, storm sewer, steam, fuel gas, telephone or telegraph service through a system of pipes or wires devoted to public utility service;

B. "cost of relocation" means the entire amount paid properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility;

C. "commission" means the state transportation commission;

D. "public highway" means any state highway or other public way in this state, including extensions thereof within urban areas, constructed in whole or in part with state aid and shall include any incorporated or related physical facilities for the handling of traffic and the right of way;

E. "relocation" means any horizontal or vertical movement of utility facilities intact and any protective measures taken or, where found by the commission to be necessary, the construction of new or additional facilities, with or without contemporaneous removal and salvage of old facilities, in this state including in any case adjustment or protection of connecting off-highway utility lines to the extent necessary;

F. " federal-aid highways" means all roads constructed in whole or in part with federal aid and includes the "interstate system", the "primary system" and the "secondary system" in this state as designated by the commission; and

G. "urban area" means an area in this state including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available federal census, within reasonable boundaries fixed by the commission."

Section 81. Section 67-9-6 NMSA 1978 (being Laws 1913, Chapter 25, Section 1, as amended) is amended to read:

"67-9-6. SURVEY FOR WESTERN EXTENSION OF CAMINO REAL.-- The state transportation commission is hereby authorized to cause a survey to be made for the purpose of determining the most feasible route for the establishment and location of a western extension of El Camino Real from a point at or near the town of Los Lunas in the county of Valencia, running thence in a northwesterly direction to the Indian town of Laguna; thence passing through or near the towns of Cubero, Grants, or San Rafael and Blue Water, in the county of Valencia and Fort Wingate and Gallup in the county of McKinley to a point on the boundary line between New Mexico and Arizona near the town of St. Michaels.

The commission is further authorized and directed to select, locate and lay out the western extension."

Section 82. Section 67-11-2 NMSA 1978 (being Laws 1957, Chapter 234, Section 2) is amended to read:

"67-11-2. AUTHORITY OF STATE TRANSPORTATION COMMISSION.--The state transportation commission is authorized and directed to do those things essential to plan, acquire by reasonable purchase or condemnation and construct a section or a part of a state or federally designated highway as a freeway or controlled access highway or to make any existing state or federally designated highway a freeway or a controlled-access highway."

Section 83. Section 67-11-3 NMSA 1978 (being Laws 1957, Chapter 234, Section 3) is amended to read:

"67-11-3. AGREEMENT TO REROUTE STREETS OR COUNTY HIGHWAYS.--The state transportation commission is authorized and directed to enter into an agreement with the authority exercising jurisdiction over the street or highway and, in accordance with the terms of this agreement, when essential, to close any street or highway or to reroute such street or highway over and under or to reroute to a connection with the freeway or controlled-access highway."

Section 84. Section 67-11-5 NMSA 1978 (being Laws 1957, Chapter 234, Section 5) is amended to read:

"67-11-5. ACQUISITION OF PROPERTY AND PROPERTY RIGHTS.--For the purposes of Chapter 67, Article 11 NMSA 1978, the state transportation commission alone or in agreement with any county, city, town or village may acquire private or public property and property rights for controlled-access facilities and service roads, including rights of access, air, view and light, by purchase or condemnation in the same manner as such units are authorized by law to acquire such property or property rights in connection with highways and streets within their respective jurisdictions. All property rights acquired under the provisions of Chapter 67, Article 11 NMSA 1978 shall be in fee simple except, in circumstances where fee simple cannot be obtained, an appropriate easement in perpetuity shall be acceptable. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof or service road in connection therewith, the state transportation commission, alone or in agreement with any county, city, town or village highway authority may, in its discretion, acquire an entire lot, block or tract of land if, by so doing, the interests of the public will be best served even though the entire lot, block or tract is not immediately needed for the right of way proper."

Section 85. Section 67-11-9 NMSA 1978 (being Laws 1957, Chapter 234, Section 9) is amended to read:

"67-11-9. LOCAL SERVICE ROADS.--Commercial enterprises or activities shall not be conducted, permitted or authorized on publicly owned land or land leased by the state, county, city, town or village highway authorities or by any other governmental agency for the purpose of providing goods and services to the users of the controlled-access facilities, and gasoline service stations or other commercial establishments shall

not be built on the property acquired for or in connection with the controlled-access facilities. However, in connection with the development of any controlled-access facility, the state, county, city, town or village highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain and vacate local service roads and streets or to designate as local service roads and street any existing road or street in such manner as to facilitate the establishment and operation of competitive gasoline service stations and other commercial enterprises on private property abutting the service roads and streets. The state transportation commission is authorized to exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled-access facilities under the terms of Chapter 67, Article 11 NMSA 1978. Such local service roads and streets shall be of appropriate design and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority."

Section 86. Section 67-12-2 NMSA 1978 (being Laws 1966, Chapter 65, Section 2, as amended) is amended to read:

"67-12-2. DEFINITIONS.--As used in the Highway Beautification Act:

A. "interstate system" means that portion of the national system of interstate and defense highways located within this state as may now or hereafter be officially so designated by the commission and approved pursuant to Title 23, United States Code;

B. "primary system" means that portion of connected main highways located within this state as may now or hereafter be officially so designated by the commission and approved pursuant to Title 23, United States Code;

C. "commission" means the state transportation commission;

D. "outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other object that is designed, intended or used to advertise or inform, any part of which is located within six hundred sixty feet of the nearest edge of the right of way and is visible from the main-traveled way of the interstate or primary systems or those located beyond six hundred sixty feet of the right of way, located outside of urban areas, visible from the main-traveled way of the system and erected with the purpose of their message being read from such main-traveled way;

E. "safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right of way of the interstate or primary systems;

F. "information center" means a site established and maintained at a safety rest area for the purpose of informing the public of places of interest within the state and providing other information the commission considers desirable;

G. "junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled or wrecked automobiles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material;

H. "automobile graveyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts;

I. "junkyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling junk or for the maintenance or operation of an automobile graveyard, any portion of which is located within one thousand feet of the nearest edge of the right of way of the interstate or primary systems, and it includes garbage dumps and sanitary fills; and

J. "urban area" means an area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available federal census, within boundaries to be fixed by the commission, subject to any necessary approval by any federal agency, department or personnel."

Section 87. Section 67-12-4 NMSA 1978 (being Laws 1966, Chapter 65, Section 4, as amended by Laws 1975, Chapter 174, Section 1 and also by Laws 1975, Chapter 193, Section 2) is amended to read:

"67-12-4. OUTDOOR ADVERTISING PROHIBITED--EXCEPTIONS.--

A. Outdoor advertising shall not be erected or maintained except:

(1) directional and other official signs and notices authorized or required by law, including, but not limited to, signs and notices pertaining to houses of worship, natural wonders and scenic and historic attractions;

(2) signs, displays and devices advertising the sale or lease of property upon which they are located;

(3) signs, displays and devices advertising activities conducted on the property upon which they are located, provided that the bisection of a parcel of land by a highway right-of-way acquisition shall not in itself be construed as converting the property into more than one parcel;

(4) signs, displays and devices located in areas which are zoned as industrial or commercial under authority of law;

(5) signs, displays and devices located within six hundred sixty feet of the nearest edge of the right of way, in unzoned industrial or commercial areas as defined by regulations promulgated by the commission, provided that no area shall be considered to be an unzoned commercial or industrial area unless and until a regulation

defining the area as unzoned commercial or industrial is promulgated by the commission; and

(6) signs lawfully in existence on October 22, 1965, determined by the commission, subject to any necessary federal approval, to be landmark signs of historic or artistic significance worthy of preservation including signs on farm structures or natural surfaces.

B. All outdoor advertising shall conform with standards and specifications, shall bear permits and have paid therefor permit fees, as required by the Highway Beautification Act and regulations promulgated pursuant thereto or authorized thereby, except that permits shall not be required or fees paid for outdoor advertising included in Paragraphs (1), (2) and (3) of Subsection A of this section.

C. Notwithstanding this section, any outdoor advertising that was lawfully in existence on the effective date of the Highway Beautification Act and has continued to so exist may remain in place until the outdoor advertising is acquired by the commission or condemnation in relation thereto is commenced by the commission, whichever first occurs, but only if and so long as all provisions of Subsection B of this section are complied with."

Section 88. Section 67-13-16 NMSA 1978 (being Laws 1973, Chapter 17, Section 16) is amended to read:

"67-13-16. APPLICATION OF ACT.--Nothing in the Scenic Highway Zoning Act shall be construed to derogate from any powers of the state transportation commission under the Highway Beautification Act or the powers of the commission relating to the construction, repair or maintenance of highways or to require any act or omission on the part of the commission that is inconsistent with federal or state laws, regulations or policies. Nothing in the Scenic Highway Zoning Act shall be construed so as to affect or limit in any way any nonconforming use in existence on the effective date of the Scenic Highway Zoning Act or any ordinance adopted pursuant thereto."

Section 89. Section 67-14-3 NMSA 1978 (being Laws 1977, Chapter 66, Section 3) is amended to read:

"67-14-3. EXEMPTION PROCEDURES.--The state transportation commission, upon receipt of a declaration, petition, resolution, certified copy of an ordinance or other clear direction from a board of county commissioners or governing body of a municipality, provided that such resolution is not in conflict with an existing statute or ordinance, that removal of motorist services directional signs would cause an economic hardship in a defined area, shall forward such declaration, resolution or finding to the secretary for inclusion as a defined hardship area qualifying for exemption pursuant to 23 U.S.C. 131(o). Any such declaration or resolution submitted to the state transportation commission shall further find that such motorist services directional signs provide directional information about goods and services in the interest of the traveling

public and shall request the retention in such specified areas by the state of such directional motorist services signs as defined in Sections 67-14-1 through 67-14-3 NMSA 1978. The state transportation commission shall thereupon comply with all regulations issued by the federal highway administration necessary for application for the exemption provided in 23 U.S.C. 131(o), provided such motorist services directional signs were lawfully erected under state law at the time of their erection and were in existence on May 5, 1976. Any costs incurred by the state transportation commission in complying with the requirements of this section may be passed on to the appropriate petitioners or the owners of the signs seeking exemption."

Section 90. Section 70-3-9 NMSA 1978 (being Laws 1921, Chapter 22, Section 3) is amended to read:

"70-3-9. PIPELINE HIGHWAY USE FORMS.--The state transportation commission shall cause to be prepared the necessary blank forms for carrying out the provisions of Sections 70-3-7 through 70-3-9 NMSA 1978."

Section 91. Section 72-5-34 NMSA 1978 (being Laws 1959, Chapter 191, Section 1) is amended to read:

"72-5-34. STATE TRANSPORTATION COMMISSION--CHANGE OF WATER USE--APPLICATION, NOTICE AND HEARING.--Whenever the state transportation commission makes application to the state engineer for a change of location of use, a change of method of use, change of point of diversion, advance withdrawals or withdrawals of accrued unused waters of any water right, whether such water right be for surface, subsurface, artesian or underground waters and whether or not either the location of the changed use or the location of the point of diversion or both be within or without the boundaries of any declared underground water basin or irrigation or conservancy district, and whatever the manner of acquisition of such water right, and such water right is to be used for the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports, the state engineer may authorize such change of location of use, change of method of use, change of point of diversion, advance withdrawals or withdrawals of accrued unused water after publication and hearing as provided in Section 72-12-3 NMSA 1978, when in the opinion of the state engineer such change of location of use, method of use, point of diversion, advance withdrawals or withdrawals of accrued unused water will not be detrimental to the other holders of valid water rights."

Section 92. Section 72-5-35 NMSA 1978 (being Laws 1959, Chapter 191, Section 2) is amended to read:

"72-5-35. STATE TRANSPORTATION COMMISSION--ADVANCE WATER WITHDRAWAL.--The state engineer may authorize the state transportation commission, holding any artesian or underground water right for the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports, to

make withdrawals of water in advance of the accrual of such water in such amounts as the state engineer may determine will not be detrimental to the other holders of valid water rights, but in no case shall such advance withdrawals exceed an amount equal to five times the annual amount of the water right actually held by the withdrawing holder."

Section 93. Section 72-5-36 NMSA 1978 (being Laws 1959, Chapter 191, Section 3) is amended to read:

"72-5-36. STATE TRANSPORTATION COMMISSION--UNUSED WATER ACCRUAL--WITHDRAWAL RATE--ACCOUNTING.--The state engineer may permit the state transportation commission, when it is engaged in the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports, to accrue unused water under one or more artesian or underground water rights for such length of time not to exceed five years as he may deem reasonable and permit the state transportation commission to withdraw such accrued water within such period of time as it may be required, but not at a rate that will be detrimental to the holders of other valid water rights. The state engineer shall require the state transportation commission holding any water right and desirous of proceeding under the authorization of Sections 72-5-34 through 72-5-38 NMSA 1978 to file periodic accountings of accruals and withdrawals by basins or districts in such form, on such dates and at such intervals as the state engineer shall designate."

Section 94. Section 72-5-37 NMSA 1978 (being Laws 1959, Chapter 191, Section 4) is amended to read:

"72-5-37. STATE TRANSPORTATION COMMISSION--TRANSFER OF WATER RIGHTS TO UNUSED WATER--REVERSION.--If the state transportation commission, holding any water rights to be used for the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports, transfers ownership of all of its water rights in one basin under which there has been an accrual of unused water, any accrued unused water shall lapse and revert to unappropriated water and the right to such water shall not pass on such transfer. If a partial water right or one of several water rights within a declared underground basin or irrigation or conservancy district is transferred, the accrued unused water, if any, shall not pass to the transferee but may be moved in accordance with the provisions of Section 72-5-34 NMSA 1978 to the point of diversion of a water right retained by the state transportation commission within the same basin but not to exceed five times the annual amount of the water right retained."

Section 95. Section 74-4A-1 NMSA 1978 (being Laws 1979, Chapter 377, Section 1, as amended) is amended to read:

"74-4A-1. RADIOACTIVE MATERIAL TRANSPORT--CONDITIONS.--

A. The environmental improvement board shall have exclusive authority to promulgate regulations prescribing the conditions for transport of radioactive material on

the highways. Such conditions shall include the conditions of transport that the environmental improvement board finds necessary to protect the health, safety and welfare of the citizens of the state. Except as specifically preempted by federal law, the state transportation commission shall have the exclusive authority within New Mexico to designate highway routes for the transport of radioactive material. Any rule or regulation adopted by the environmental improvement board that designates highway routes for the transport of radioactive material and that was in effect prior to March 1, 1991 is deemed null and void. The state transportation commission shall incorporate into the record and consider in the initial designation of routes for the transport of radioactive material the evidentiary record from the environmental improvement board public hearings held for the purpose of receiving public comment regarding the designation of routes for the transport of radioactive material.

B. For the purposes of this section, "radioactive material" means a 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, and in which the radioactivity is essentially uniformly distributed, are not considered to be radioactive materials. "Radioactive material" includes but is not limited to:

(1) materials associated with the operation and decommissioning of nuclear reactors and the supporting fuel cycle;

(2) industrial radioisotope sources;

(3) radioactive materials used in nuclear medicine;

(4) radioactive materials used for research, education or training;
and

(5) radioactive wastes;

but does not include radioactive material the regulation of which has been specifically preempted by federal law.

C. The department of environment shall have the authority to impose fines not to exceed one thousand dollars (\$1,000) as set by regulation of the environmental improvement board for a violation of the board's regulations pertaining to the transport of radioactive materials.

D. Nothing in this section shall be construed to alter the obligation of the state under the April 3, 1974 agreement between the state and the atomic energy commission for the discontinuance of certain commission regulatory authority and responsibility."

Section 96. Section 76-7-15 NMSA 1978 (being Laws 1959, Chapter 243, Section 15) is amended to read:

"76-7-15. NOTICE TO LAND OCCUPIERS OF CONTROL MEASURES--
INSPECTION OF PROPERTY--FAILURE TO COMPLY WITH ORDER.--

A. The chairman of the board of county commissioners governing the noxious weed control district shall give written notice to each land occupier within the district informing him of the control measures that are in effect on his land and all other necessary information to enable the land occupier to carry out the measures.

B. It is the duty of each land occupier to comply with the control measures prescribed by the governing body and the responsibility of the appropriate county officials to comply with the control measures determined by the governing body in order to effectuate noxious weed control measures on rights of way of all public roads and other public lands within the district.

C. The governing body of the district, if it deems advisable, may appoint an inspector to serve as an officer of the governing body. The inspector shall have the right to enter upon any land within the district to determine whether control measures are necessary and to determine whether control measures prescribed by the governing body are being carried out.

D. If it is found that a land owner or occupier is not complying with the governing body's directions, the governing body shall give him written notice ordering him to comply within a stated time. If he fails to comply with the order, the governing body may file a suit for a mandatory injunction in the district court of the county in which the land is situated to compel him to comply with the order. Any land owner or occupier against whom an injunction is issued shall, upon a finding of the court that the land owner or occupier unreasonably refused to comply with the governing body's order and that the control measures are appropriate, be liable for all costs of the suit and for a reasonable attorney fee to be fixed by the court. The court shall upon a proper determination issue an injunction ordering compliance with the governing body's directions.

E. Any adjoining land owner to a county or state road situated within the noxious weed control district may petition the governing body of the district to spray or take weed control measures of noxious weed growing upon adjoining rights of way. Upon determination by the governing body that the control measures requested are necessary, the governing body shall order appropriate action to be taken to control noxious weeds. If the lands or rights of way are under the control of the department of transportation, the governing body shall first make formal application to the state transportation commission requesting the department of transportation to perform the necessary control measures. If the department of transportation fails or refuses to take appropriate action, the governing body of the district shall perform the necessary work with district facilities. In the event sufficient funds are not available to finance the control

measures by the district, upon the rights of way, the adjoining land owner or occupier shall be authorized by the governing body to take appropriate action, and he shall be reimbursed from funds of the district as soon as sufficient funds become available. The governing body shall petition the department of transportation for reimbursement of necessary and actual expenses of the noxious weed control measures taken upon the state highway rights of way or lands."

Section 97. TEMPORARY PROVISION--REFERENCES IN LAW.--All reference in law to the state highway commission shall be deemed to be references to the state transportation commission. All references in law to the state highway and transportation department shall be deemed to references to the department of transportation. All references in law to the secretary of highway and transportation shall be deemed to be references to the secretary of transportation.

Section 98. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 881, AS AMENDED

CHAPTER 143

CHAPTER 143, LAWS 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR A TRANSITION PERIOD FOR THE ADMINISTRATION OF PUBLIC
SCHOOLS PURSUANT TO THE PUBLIC SCHOOL CODE CONTINGENT UPON THE
ADOPTION OF A CERTAIN CONSTITUTIONAL AMENDMENT; REPEALING
CERTAIN ARTICLES OF THE PUBLIC SCHOOL CODE EFFECTIVE JULY 1, 2004.

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

Section 1. TEMPORARY PROVISION.--Until July 1, 2004:

A. all references in law to the state board of education or to the superintendent of public instruction shall mean the secretary of public education appointed by the governor pursuant to Article 12, Section 6 of the constitution of New Mexico. The secretary of public education shall perform those duties and exercise those powers provided by law for the superintendent of public instruction or the state board of

education and may expend, for the original purpose, appropriations authorized for expenditure by the superintendent of public instruction or the state board of education; provided, however, that:

(1) the secretary shall not establish new policy for the public schools without first consulting with the public education commission; and

(2) the secretary may expend so much of the appropriations to the public education department as are necessary for the expenses of the public education commission; and

B. all references in law to the state department of public education shall mean the public education department created by Article 12, Section 6 of the constitution of New Mexico. The public education department shall consist of the same personnel and property and shall perform those duties and exercise those powers provided by law for the state department of public education and may expend, for the original purpose, appropriations authorized for expenditure by the state department of public education.

Section 2. DELAYED REPEAL.--Effective July 1, 2004, Articles 1, 2, 13, 13A and 15 of Chapter 22 NMSA 1978 are repealed.

Section 3. CONTINGENCY.--The provisions of this act are contingent upon the adoption by the people of the amendment to Article 12, Section 6 of the constitution of New Mexico as proposed by Senate Education Committee Substitute for Senate Joint Resolutions 2, 5, 12 and 21 or a similar proposal of the first session of the forty-sixth legislature.

SENATE EDUCATION COMMITTEE SUBSTITUTE

FOR SENATE BILL 911, AS AMENDED

CHAPTER 144

CHAPTER 144, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 PERTAINING TO PROGRAM COST CALCULATIONS.

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

Section 1. 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) of this subsection by the instructional staff training and experience index and adding the program units itemized as Paragraphs (5) through (9) of 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) fine arts education;
- (6) size adjustment;
- (7) at-risk program;
- (8) enrollment growth or new district adjustment;
- (9) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers; and
- (10) national board for professional teaching standards certification.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts 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 if the special program needs as enumerated in this section are met."

Section 2. A new section of the Public School Finance Act, Section 22-8-23.4 NMSA 1978, is enacted to read:

"22-8-23.4. NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS--CERTIFIED TEACHERS PROGRAM UNITS.--The number of program units for teachers certified by the national board for professional teaching standards is determined by multiplying by one and one-half the number of teachers certified by the national board for professional teaching standards employed by the school district on or before the fortieth day of the school year and verified by the department. Department approval of these units shall be contingent on verification by the school district that these teachers are receiving a one-time salary differential equal to or greater than the amount generated by the units multiplied by the program unit value during the fiscal year in which the school district will receive these units."

Section 3. A new section of the Public School Finance

Act is enacted to read:

"FINE ARTS EDUCATION PROGRAM UNITS.--The number of fine arts education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in

accordance with the provisions of the Fine Arts Education Act by the cost differential factor of 0.0166 for fiscal year 2004, 0.0332 for fiscal year 2005 and 0.05 for fiscal year 2006 and succeeding fiscal years."

SENATE BILL 216, AS AMENDED

CHAPTER 145

CHAPTER 145, LAWS 2003

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; PROVIDING FOR RETURN TO EMPLOYMENT.

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

Section 1. Section 22-11-25.1 NMSA 1978 (being Laws 2001, Chapter 283, Section 2) is amended to read:

"22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED--
ADMINISTRATIVE UNIT CONTRIBUTIONS.--

A. Except as provided in Subsections B and E of this section, beginning January 1, 2002 and continuing until January 1, 2012, a retired member may begin employment at a local administrative unit and shall not be required to suspend retirement benefits if the member has not been employed as an employee or independent contractor by a local administrative unit for at least twelve consecutive months from the date of retirement to the commencement of employment or reemployment with a local administrative unit. If the retired member returns to employment without first completing twelve consecutive months of retirement, the retired member shall remove himself from retirement.

B. A retired member who was retired on or before January 1, 2001, has not since suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act and is reemployed by a local administrative unit may continue employment at the local administrative unit and shall not be required to suspend retirement benefits.

C. A retired member who returns to employment during retirement pursuant to Subsection A or B of this section is entitled to continue to receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's reemployment with a local administrative unit.

D. A retired member who returns to employment pursuant to Subsections A or B of this section shall not make contributions to the fund as specified in the Educational Retirement Act; however, the local administrative unit's contributions as specified in that act shall be paid to the fund as if the retired member was a non-retired employee.

E. Beginning July 1, 2003 and continuing until January 1, 2012, a retired member who retired on or before January 1, 2001 and who has not been employed as an employee or independent contractor by a local administrative unit for at least ninety days may begin employment at a local administrative unit without suspending retirement benefits if the retired member was not employed by a local administrative unit for an additional twelve or more consecutive months after the initial date of the retirement."

SENATE BILL 283, AS AMENDED

CHAPTER 146

CHAPTER 146, LAWS 2003

AN ACT

RELATING TO INSTRUCTIONAL MATERIAL; REQUIRING HISPANIC AND NATIVE AMERICAN MATERIALS FOR A PERCENTAGE OF INSTRUCTIONAL MATERIAL APPROVED BY THE STATE BOARD OF EDUCATION.

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

Section 1. 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. At least ten percent of instructional material on the multiple list concerning language arts and social studies shall contain material that is relevant to the cultures, languages, history and experiences of multi-ethnic students. 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."

SENATE BILL 396, AS AMENDED

CHAPTER 147

CHAPTER 147, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT; AMENDING THE TECHNOLOGY FOR EDUCATION ACT PERTAINING TO DISTRIBUTIONS; AMENDING CERTAIN SECTIONS OF THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT; AMENDING A CERTAIN SECTION OF THE PUBLIC SCHOOL CODE CONCERNING APPROVAL OF CONSTRUCTION; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. A new section of the Public School Capital Outlay Act is enacted to read:

"PUBLIC SCHOOL FACILITIES AUTHORITY--CREATION--POWERS AND DUTIES.--

A. The "public school facilities authority" is created under the public school capital outlay council. The authority shall be headed by a director, selected by the council, who shall be versed in construction, architecture or project management. The director may hire no more than two deputies with the approval of the council, and, subject to budgetary constraints, shall employ or contract with such technical and administrative personnel as are necessary to carry out the provisions of this section. The director and deputies shall be exempt from the provisions of the Personnel Act; after July 1, 2004, all other employees of the authority shall be subject to the provisions of the Personnel Act.

B. The authority shall:

- (1) serve as staff to the council;
- (2) as directed by the council, provide those assistance and oversight functions required of the council by Section 22-24-5.1 NMSA 1978;
- (3) assist school districts with:
 - (a) the development and implementation of five-year facilities plans and preventive maintenance plans;
 - (b) procurement of architectural and engineering services;
 - (c) management and oversight of construction activities; and
 - (d) training programs;
- (4) conduct ongoing reviews of five-year facilities plans, preventive maintenance plans and performance pursuant to those plans;
- (5) ensure that public school capital outlay projects are in compliance with applicable building codes;
- (6) conduct on-site inspections as necessary to ensure that the construction specifications are being met and periodically inspect all of the documents related to projects;

(7) where appropriate, require the use of standardized construction documents and the use of a standardized process for change orders;

(8) have access to the premises of a project and any documentation relating to the project;

(9) after consulting with the department of education, develop building standards for public school facilities and ensure compliance with those standards;

(10) maintain a database of the condition of school facilities and maintenance schedules; and

(11) ensure that outstanding deficiencies are corrected pursuant to Section 22-24-4.1 NMSA 1978. In the performance of this duty, the authority:

(a) shall work with school districts to validate the assessment of the outstanding deficiencies and the projected costs to correct the deficiencies;

(b) shall work with school districts to provide direct oversight of the management and construction of the projects that will correct the outstanding deficiencies;

(c) shall oversee all aspects of the contracts entered into by the council to correct the outstanding deficiencies;

(d) may conduct on-site inspections while the deficiencies correction work is being done to ensure that the construction specifications are being met and may periodically inspect all of the documents relating to the projects;

(e) may require the use of standardized construction documents and the use of a standardized process for change orders;

(f) may access the premises of a project and any documentation relating to the project; and

(g) shall maintain, track and account for deficiency correction projects separately from other capital outlay projects funded pursuant to the Public School Capital Outlay Act.

C. All actions taken by the authority shall be consistent with educational programs conducted pursuant to the Public School Code. In the event of any potential or perceived conflict between a proposed action of the authority and an educational program, the authority shall consult with the state superintendent."

Section 2. Section 22-20-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 270, as amended) is amended to read:

"22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC SCHOOL FACILITIES AUTHORITY.--

A. Each local school board shall secure the approval of the director of the public school facilities authority or his designee prior to the construction or letting of contracts for construction of any school building or related school structure or before reopening an existing structure that was formerly used as a school building but that has not been used for that purpose during the previous year. A written application shall be submitted to the director requesting approval of the construction, and, upon receipt, the director shall forward a copy of the application to the state superintendent. The director shall prescribe the form of the application, which shall include the following:

- (1) a statement of need;
- (2) the anticipated number of students affected by the construction;
- (3) the estimated cost;
- (4) a description of the proposed construction or structure to be built;
- (5) a map of the area showing existing school attendance centers within a five-mile radius and any obstructions to attending the attendance centers, such as but not limited to railroad tracks, rivers and limited-access highways; and
- (6) such other information as may be required by the director.

B. The director or his designee shall give his approval to an application if he reasonably determines that:

- (1) the construction will not cause an unnecessary proliferation of school construction;
- (2) the construction is needed in the school district;
- (3) the construction is feasible;
- (4) the cost of the construction is reasonable;
- (5) the school district is financially able to pay for the construction;

and

(6) the state superintendent has certified that the construction will support the educational program of the school district.

C. Within thirty days after the receipt of an application filed pursuant to this section, the director or his designee shall in writing notify the local school board making the application and the department of education of his approval or disapproval of the application."

Section 3. Section 22-24-4 NMSA 1978 (being Laws 1975, Chapter 235, Section 4, as amended) is amended to read:

"22-24-4. FUND CREATED--USE.--

A. There is created the "public school capital outlay fund". Balances remaining in the fund at the end of each fiscal year shall not revert.

B. Except as provided in Subsections G and H of this section, money in the fund may be used only for capital expenditures deemed by the council necessary for an adequate educational program.

C. The council may authorize the purchase by the property control division of the general services department of property to be loaned to school districts to meet a temporary requirement. Payment for these purchases shall be made from the fund. Title and custody to the property shall rest in the property control division. The council shall authorize the lending of the property to school districts upon request and upon finding that sufficient need exists. Application for use or return of state-owned portable classroom buildings shall be submitted by school districts to the council. Expenses of maintenance of the property while in the custody of the property control division shall be paid from the fund; expenses of maintenance and insurance of the property while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the property by the property control division with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by school districts to the council in accordance with requirements of the council. The council shall require as a condition of application that a school district have a current five-year facilities plan, which shall include a current preventive maintenance plan to which the school adheres for each public school in the district.

E. The council shall review all requests for assistance from the fund and shall allocate funds only for those capital outlay projects that meet the criteria of the Public School Capital Outlay Act.

F. Money in the fund shall be disbursed by warrant of the department of finance and administration on vouchers signed by the secretary of finance and administration following certification by the council that an application has been

approved. At the discretion of the council, money for a project shall be distributed as follows:

(1) up to ten percent of the portion of the project cost funded with distributions from the fund or five percent of the total project cost, whichever is greater, may be paid to the school district before work commences with the balance of the grant award made on a cost-reimbursement basis; or

(2) the council may make payments directly to the contractor.

G. An amount up to five percent of the average annual grant assistance authorized from the fund during the three previous fiscal years may annually be expended for project management expenses.

H. Up to one million two hundred fifty thousand dollars (\$1,250,000) of the balances of the fund may be expended in fiscal years 2003 and 2004 by the council for the purpose of updating and refining the statewide assessment study required by Section 22-24-5 NMSA 1978 and for the training of state and local officials on the use of the database and other data management related issues identified by the council.

I. Of the appropriation made to the fund by Subsection D of Section 15 of Chapter 338 of Laws 2001 for the purpose of correcting outstanding deficiencies, one million one hundred thousand dollars (\$1,100,000) is appropriated to the council for expenditure in fiscal year 2004 for the core administrative functions of the deficiencies corrections program. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the fund.

J. Up to seven hundred thousand dollars (\$700,000) of the balances of the fund may be expended by the council in fiscal year 2004 for the core administrative functions of the public school facilities authority."

Section 4. Section 22-24-4.1 NMSA 1978 (being Laws 2001, Chapter 338, Section 6) is amended to read:

"22-24-4.1. OUTSTANDING DEFICIENCIES--ASSESSMENT--CORRECTION.--

A. No later than September 1, 2001, the council shall define and develop guidelines, consistent with the codes adopted by the construction industries commission pursuant to the Construction Industries Licensing Act, for school districts to use to identify outstanding serious deficiencies in public school buildings and grounds, including buildings and grounds of charter schools, that may adversely affect the health or safety of students and school personnel.

B. A school district shall use these guidelines to complete a self-assessment of the outstanding health or safety deficiencies within the district and provide cost projections to correct the outstanding deficiencies.

C. The council shall develop a methodology for prioritizing projects that will correct the deficiencies.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement Code, enter into construction contracts with contractors to correct the deficiencies.

E. In entering into construction contracts to correct deficiencies pursuant to this section, the council shall include such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible and consistent with the original purpose.

F. Any deficiency that may adversely affect the health or safety of students or school personnel may be corrected pursuant to this section, regardless of the local effort or percentage of indebtedness of the school district.

G. It is the intent of the legislature that all outstanding deficiencies in public schools and grounds that may adversely affect the health or safety of students and school personnel be identified and awards made pursuant to this section no later than June 30, 2004, and that funds be expended no later than June 30, 2006."

Section 5. A new section of the Public School Capital Outlay Act, Section 22-24-5.3 NMSA 1978, is enacted to read:

"22-24-5.3. PREVENTIVE MAINTENANCE PLANS--GUIDELINES--
APPROVAL.--

A. The council shall adopt guidelines that will assist school districts in the development and implementation of preventive maintenance plans. In developing the guidelines, the council shall ensure that they are not overly complex, that they are user-friendly and that they take into account the geographic and size variations of the districts throughout the state. The guidelines shall include the major requirements for:

- (1) establishing and implementing a preventive maintenance plan;
- (2) necessary budgets, personnel and staff support;
- (3) staff training; and
- (4) evaluation and auditing.

B. To the extent resources are available, the council shall provide assistance to districts in developing and implementing a preventive maintenance plan.

C. For project allocation cycles beginning after September 1, 2003, a school district shall not be eligible for funding pursuant to Section 22-24-5 NMSA 1978 unless the district has a preventive maintenance plan that has been approved by the council.

D. As used in this section, "preventive maintenance" means the regularly scheduled repair and maintenance needed to keep a building component operating at peak efficiency and to extend its useful life. "Preventive maintenance" includes scheduled activities intended to prevent breakdowns and premature failures, including periodic inspections, lubrication, calibrations and replacement of expendable components of equipment."

Section 6. 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.--A 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 six property tax years."

Section 7. 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 proclamation 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 six 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 8. 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 SIX 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 a specified number of property tax years not exceeding six 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 any property tax year. 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."

Section 9. Section 22-25-9 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

"22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING TAX UNDER CERTAIN CIRCUMSTANCES.--

A. Except as provided in Subsection C of this section, the state superintendent shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act an amount from the public school capital improvements fund that is equal to the amount by which the revenue estimated to be received from the imposed tax, at the rate certified by the department of finance and administration in accordance with Section 22-25-7 NMSA 1978, assuming a one hundred percent collection rate, is less than an amount calculated by multiplying the school district's first forty days' total program units by the dollar amount specified in Subsection B of this section and further multiplying the product obtained by the tax rate approved by the qualified electors in the most recent election on the question of imposing a tax under the Public School Capital Improvements Act. The distribution shall be made each year that the tax is imposed in accordance with Section 22-25-7 NMSA 1978; provided that no state distribution from the public school capital improvements

fund may be used for capital improvements to any administration building of a school district. In the event that sufficient funds are not available in the public school capital improvements fund to make the state distribution provided for in this section, the dollar per program unit figure shall be reduced as necessary.

B. In calculating the state distribution pursuant to Subsection A of this section, the following amounts shall be used:

(1) fifty dollars (\$50.00) per program unit; and

(2) for fiscal year 2005 and thereafter, an additional amount certified to the state superintendent by the public school capital outlay council. No later than June 1, 2004 and each June 1 thereafter, the council shall determine the amount needed in the next fiscal year for public school capital outlay projects pursuant to the Public School Capital Outlay Act and the amount of revenue, from all sources, available for the projects. If, in the sole discretion of the council, the amount available exceeds the amount needed, the council may certify an additional amount pursuant to this paragraph; provided that the sum of the amount calculated pursuant to this paragraph plus the amount in Paragraph (1) of this subsection shall not result in a total statewide distribution that, in the opinion of the council, exceeds one half of the total revenue estimated to be received from taxes imposed pursuant to the Public School Capital Improvements Act.

C. For fiscal year 2004 and thereafter, notwithstanding the amount calculated to be distributed pursuant to Subsections A and B of this section, a school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a distribution less than an amount equal to five dollars (\$5.00) multiplied by the school district's first forty days' total program units and further multiplying the product obtained by the approved tax rate.

D. In making distributions pursuant to this section, the state superintendent shall include such reporting requirements and conditions as are required by rule of the public school capital outlay council. The council shall adopt such requirements and conditions as are necessary to ensure that the distributions are expended in the most prudent manner possible and are consistent with the original purpose as specified in the authorizing resolution. Copies of reports or other information received by the state superintendent in response to the requirements and conditions shall be forwarded to the council."

Section 10. Section 22-24-5 NMSA 1978 (being Laws 1975, Chapter 235, Section 5, as amended) is amended to read:

"22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--APPLICATION--GRANT ASSISTANCE.--

A. For project allocation cycles occurring before September 1, 2003, the council shall approve an application for grant assistance from the fund for a public school capital outlay project not wholly funded pursuant to Section 22-24-4.1 NMSA 1978, when the council determines that:

(1) a need exists requiring action;

(2) the residents of the school district have provided available resources to the school district to meet its capital outlay requirements;

(3) the school district has used its capital resources in a prudent manner;

(4) the school district has provided insurance for buildings of the school district in accordance with the provisions of Section 13-5-3 NMSA 1978;

(5) the school district:

(a) is indebted at not less than

sixty-five percent of the total general obligation debt authorized by law; or

(b) within the last three years, was indebted at the level required in Subparagraph (a) of this paragraph and received a grant pursuant to this section for the initial stages of a project and currently has a critical need for an additional grant to complete the same project;

(6) the application includes:

(a) the capital needs of any charter schools located in the school district or the school district has shown that the capital needs of the charter schools are not as great as the capital needs requested in the application; and

(b) the facilities needed in the school district to implement a full-day kindergarten program or that the school district has shown that the need for facilities to implement the program is not as great as the capital needs requested in the application; provided that the total amount of assistance grants made in a fiscal year for the purpose of implementing full-day kindergarten programs shall not exceed five million dollars (\$5,000,000); and

(7) the school district has submitted a five-year facilities plan that includes:

(a) enrollment projections;

(b) a current preventive maintenance plan to which the school adheres for each public school in the district; and

(c) projections for the facilities needed in order to maintain a full-day kindergarten program.

B. The council shall consider all applications for assistance from the fund and, after a public hearing, shall either approve or deny the application. Applications for grant assistance shall only be accepted by the council after a school district has complied with the provisions of this section. The council shall list all applications in order of priority, and all allocations shall be made on a priority basis, except:

(1) twenty million dollars (\$20,000,000) of the proceeds from supplemental severance tax bonds available for the funding cycle in each of fiscal years 2002 and 2003 shall be set aside for allocation solely for projects in school districts that are eligible for funding from the fund and that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid";

(2) fifteen million dollars (\$15,000,000) of the money in the fund available for the funding cycle in fiscal year 2004 shall be set aside for allocation solely for projects in school districts that are eligible for funding and that:

(a) are eligible for additional program units pursuant to Section 22-8-23.1 NMSA 1978;

(b) are indebted at not less than ninety percent of the total general obligation debt authorized by law; and

(c) have a net taxable value per MEM equal to less than fifty percent of the average statewide net taxable value per MEM; and

(3) in the case of an emergency, the order of priority shall first reflect those projects that have been previously funded but are not as yet completed, excluding expansion of those projects and contingent upon maintenance of the required local support.

C. For allocation cycles beginning after

September 1, 2003, the following provisions apply:

(1) all school districts are eligible to apply for funding from the fund, regardless of percentage of indebtedness;

(2) priorities for funding shall be determined by using the statewide adequacy standards developed pursuant to Subsection D of this section; provided that the council shall apply the standards to charter schools to the same extent that they are applied to other public schools;

(3) after consulting with the staff architect of the property control division of the general services department, the council shall establish criteria to be used in public school capital outlay projects that receive grant assistance pursuant to the Public School Capital Outlay Act. In establishing the criteria, the council shall consider:

(a) the feasibility of using design, build and finance arrangements for public school capital outlay projects;

(b) the potential use of more durable construction materials that may reduce long-term operating costs; and

(c) any other financing or construction concept that may maximize the dollar effect of the state grant assistance;

(4) no more than ten percent of the combined total of grants in a funding cycle shall be used for retrofitting existing facilities for technology infrastructure;

(5) except as provided in Paragraph (6) or (8) of this subsection, the state share of a project approved and ranked by the council shall be funded within available resources in accordance with the following procedure:

(a) the final prior year net taxable value for a school district divided by the MEM for that district is calculated for each school district;

(b) the final prior year net taxable value for the whole state divided by the MEM for the state is calculated;

(c) excluding any school district for which the result calculated pursuant to Subparagraph (a) of this paragraph is more than twice the result calculated pursuant to Subparagraph (b) of this paragraph, the results calculated pursuant to Subparagraph (a) of this paragraph are listed from highest to lowest;

(d) the lowest value listed pursuant to Subparagraph (c) of this paragraph is subtracted from the highest value listed pursuant to that subparagraph;

(e) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is subtracted from the highest value listed in Subparagraph (c) of this paragraph;

(f) the result calculated pursuant to Subparagraph (e) of this paragraph is divided by the result calculated pursuant to Subparagraph (d) of this paragraph;

(g) the sum of the property tax mill levies for the prior tax year imposed by each school district on residential property pursuant to Chapter 22, Article 18 NMSA 1978, the Public School Capital Improvements Act, the Public School Buildings Act, the Education Technology Equipment Act and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 is calculated for each school district;

(h) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the highest value calculated pursuant to that subparagraph;

(i) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the value calculated pursuant to that subparagraph for the subject school district;

(j) the value calculated pursuant to Subparagraph (i) of this paragraph is divided by the value calculated pursuant to Subparagraph (h) of this paragraph;

(k) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is less than five-tenths, then, except as provided in Subparagraph (n) or (o) of this paragraph, the value calculated for that district pursuant to Subparagraph (f) of this paragraph equals the portion of the approved project to be funded from the fund;

(l) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then that value is multiplied by five-hundredths;

(m) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then the value calculated pursuant to Subparagraph (l) of this paragraph is added to the value calculated pursuant to Subparagraph (f) of this paragraph. Except as provided in Subparagraph (n) or (o) of this paragraph, the sum equals the portion of the approved project to be funded from the fund;

(n) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value less than one-tenth, one-tenth shall be used as the portion of the approved project to be funded from the fund;

(o) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value greater than one, one shall be used as the portion of the approved project to be funded from the fund;

(p) except as reduced pursuant to Paragraph (6) of this subsection, the amount to be distributed from the fund for an approved project shall equal the value for the subject school district derived from Subparagraph (k), (m), (n) or (o) of this paragraph multiplied by the total project cost; and

(q) as used in this paragraph, "MEM" means the total enrollment of students attending public school in a school district in the final funded prior school year, with kindergarten being counted as five-tenths;

(6) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the following procedure:

(a) the total of all legislative appropriations made after January 1, 2003 directly to, and not rejected by, the subject school district for non-operating purposes, excluding educational technology and reauthorizations of appropriations made to the subject school district, is calculated;

(b) the applicable amount for the subject school district calculated from Subparagraph (k), (m), (n) or (o) of Paragraph (5) of this subsection is subtracted from one;

(c) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is multiplied by the amount calculated pursuant to Subparagraph (b) of this paragraph for that school district;

(d) the total amount of reductions for the subject school district previously made pursuant to Subparagraph (e) of this paragraph for other approved public school capital outlay projects is subtracted from the amount calculated pursuant to Subparagraph (c) of this paragraph; and

(e) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the amount calculated pursuant to Subparagraph (d) of this paragraph;

(7) as used in Paragraphs (5) and (6) of this subsection, "subject school district" means the school district that has submitted the application for funding and in which the approved public school capital outlay project will be located;

(8) in those instances in which a school district has used all of its local resources, the council may fund up to the total amount of a project; and

(9) no application for grant assistance from the fund shall be approved unless the council determines that:

(a) the public school capital outlay project is needed and included in the school district's five-year facilities plan among its top priorities;

(b) the school district has used its capital resources in a prudent manner;

(c) the school district has provided insurance for buildings of the school district in accordance with the provisions of Section 13-5-3 NMSA 1978;

(d) the school district has submitted a five-year facilities plan that includes: 1) enrollment projections; 2) a current preventive maintenance plan that has been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by each public school in the district; and 3) projections for the facilities needed in order to maintain a full-day kindergarten program;

(e) the school district is willing and able to pay any portion of the total cost of the public school capital outlay project that, according to Paragraph (5), (6) or (8) of this subsection, is not funded with grant assistance from the fund;

(f) the application includes the capital needs of any charter schools located in the school district or the school district has shown that the facilities of the charter schools in the district meet the statewide adequacy standards; and

(g) the school district has agreed, in writing, to comply with any reporting requirements or conditions imposed by the council pursuant to Section 22-24-5.1 NMSA 1978.

D. After consulting with the public school capital outlay task force and other experts, the council shall develop and regularly review and update statewide adequacy standards applicable to all school districts. The standards shall establish the minimum acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities and the need for technological infrastructure. The amount of outstanding deviation from the standards shall be used by the council after September 1, 2003 in evaluating and prioritizing public school capital outlay projects.

E. It is the intent of the legislature that grant assistance made pursuant to this section allow every school district to meet the standards developed pursuant to Subsection D of this section; provided, however, that nothing in the Public School Capital Outlay Act or the development of standards pursuant to that act prohibits a school district from using local funds to exceed the statewide adequacy standards.

F. Upon request, the council shall work with, and provide assistance and information to, the public school capital outlay task force.

G. The council may establish committees or task forces, not necessarily consisting of council members, and may use the committees or task forces, as well as existing agencies or organizations, to conduct studies, conduct surveys, submit recommendations or otherwise contribute expertise from the public schools, programs,

interest groups and segments of society most concerned with a particular aspect of the council's work.

H. The council shall promulgate such rules as are necessary to carry out the provisions of the Public School Capital Outlay Act.

I. No later than December 15 of each year, the council shall prepare a report summarizing its activities during the previous fiscal year. The report shall describe in detail all projects funded, the progress of projects previously funded but not completed, the criteria used to prioritize and fund projects and all other council actions. The report shall be submitted to the state board, the governor, the legislative finance committee, the legislative education study committee and each member of the legislature."

Section 11. Section 22-15A-9 NMSA 1978 (being Laws 1994, Chapter 96, Section 9, as amended) is amended to read:

"22-15A-9. EDUCATIONAL TECHNOLOGY FUND--DISTRIBUTION.--

A. Upon annual review and approval of a school district's educational technology plan, the bureau shall determine a separate distribution from the educational technology fund for each school district.

B. On or before July 31 of each year, the bureau shall distribute money in the educational technology fund directly to each school district in an amount equal to ninety percent of the district's estimated adjusted entitlement calculated pursuant to Subsection C of this section. A school district's unadjusted entitlement is that portion of the total amount of the annual appropriation that the projected membership bears to the projected membership of the state. Kindergarten membership shall be calculated on a one-half full-time equivalent basis.

C. A school district's estimated adjusted entitlement shall be calculated by the bureau using the following procedure:

(1) a base allocation is calculated by multiplying the total annual appropriation by seventy-five thousandths of one percent;

(2) the estimated adjusted entitlement amount for a school district whose unadjusted entitlement is at or below the base allocation shall be equal to the base allocation. For a school district whose unadjusted entitlement is higher than the base allocation, the estimated adjusted entitlement shall be calculated pursuant to Paragraphs (3) through (13) of this subsection;

(3) the total projected membership in those school districts that will receive the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total projected state membership;

(4) the total of the estimated adjusted entitlement amounts that will be distributed to those school districts receiving the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total appropriation;

(5) the projected membership for the district is divided by the result calculated pursuant to Paragraph (3) of this subsection;

(6) the number calculated pursuant to Paragraph (5) of this subsection is multiplied by the value calculated pursuant to Paragraph (4) of this subsection;

(7) the total of all legislative appropriations, excluding reauthorizations of education technology appropriations made to the subject school district, made after January 1, 2003 for educational technology directly to, and not rejected by, the school district is calculated. No later than June 30 of each year, the legislative council service shall certify to the bureau the amount of direct appropriations made to each school district during the preceding twelve months;

(8) the applicable amount for the school district calculated from Subparagraph (k), (m), (n) or (o) of Paragraph (5) of Subsection C of Section 22-24-5 NMSA 1978 is subtracted from one;

(9) the value calculated pursuant to Paragraph (7) of this subsection for the school district is multiplied by the amount calculated pursuant to Paragraph (8) of this subsection for that school district;

(10) the total amount of reductions for the school district made in prior fiscal years pursuant to Paragraph (11) of this subsection is subtracted from the amount calculated pursuant to Paragraph (9) of this subsection for that school district;

(11) the amount calculated for the school district pursuant to Paragraph (10) of this subsection is subtracted from the amount calculated pursuant to Paragraph (6) of this subsection for that school district;

(12) if the amount calculated for the school district pursuant to Paragraph (11) of this subsection is equal to or less than the base allocation amount, the estimated adjusted entitlement amount for that school district is equal to the base allocation amount; and

(13) if the amount calculated for the school district pursuant to Paragraph (11) of this subsection is more than the base allocation amount, the estimated adjusted entitlement amount for that school district is equal to the amount calculated pursuant to that paragraph.

D. On or before January 30 of each year, the bureau shall recompute each adjusted entitlement using the final funded membership for that year and, without

making any additional reductions, shall allocate the balance of the annual appropriation adjusting for any over- or under-projection of membership.

E. Any school district receiving funding pursuant to the Technology for Education Act is responsible for the purchase, distribution, use and maintenance of educational technology.

F. As used in this section, "membership" means the total enrollment of qualified students, as defined in the Public School Finance Act, on the current roll of class or school on a specified day. The current roll is established by the addition of original entries and re-entries minus withdrawals. Withdrawal of students, in addition to students formally withdrawn from the public school, includes students absent from the public school for as many as ten consecutive school days."

Section 12. Section 22-15A-10 NMSA 1978 (being Laws 1994, Chapter 96, Section 10) is amended to read:

"22-15A-10. ANNUAL REPORT.--Annually, at a time specified by the department of education, each school district receiving distributions from the educational technology fund shall file a report with the department of education regarding distributions received, direct legislative appropriations for educational technology made and not rejected, expenditures made and educational technology obtained by the district and such other related information as may be required by the department of education."

Section 13. TEMPORARY PROVISION--TRANSFER.--On July 1, 2003:

A. all personnel of the deficiencies correction unit of the public school capital outlay council and up to four full-time employees of the capital outlay unit of the state department of public education are transferred to the public school facilities authority. The superintendent of public instruction and the public school capital outlay council shall jointly determine the employees of the capital outlay unit to be transferred pursuant to this subsection; provided that employees subject to the provisions of the Personnel Act prior to the transfer shall remain subject to the provisions of that act subsequent to the transfer;

B. all appropriations, money, records, property, equipment and supplies of the public school capital outlay council and the state department of public education that are primarily associated with the personnel described in Subsection A of this section are transferred to the public school facilities authority;

C. all contracts and agreements of the public school capital outlay council and the state department of public education relating to the activities of the personnel described in Subsection A of this section are transferred to the public school facilities authority; and

D. the superintendent of public instruction and the public school capital outlay council shall jointly identify the property to be transferred pursuant to Subsections B and C of this section.

Section 14. REPEAL.--Sections 22-20-3 and 22-24-4.2 NMSA 1978 (being Laws 1967, Chapter 16, Section 272 and Laws 2001, Chapter 338, Section 7, as amended) are repealed.

Section 15. EFFECTIVE DATE.--The effective date of the provisions of Sections 1, 2, 13 and 14 of this act is July 1, 2003.

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

SENATE BILL 513, AS AMENDED,

WITH EMERGENCY CLAUSE

SIGNED APRIL 4, 2003

CHAPTER 148

CHAPTER 148, LAWS 2003

AN ACT

RELATING TO TRAFFIC SAFETY; CREATING THE SAFE ROUTES TO SCHOOL PROGRAM; ENACTING A SECTION OF THE NMSA 1978.

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

Section 1. Section 66-7-501 NMSA 1978 (being Laws 1978, Chapter 35, Section 488) is amended to read:

"66-7-501. SHORT TITLE.--Sections 66-7-501 through 66-7-513 NMSA 1978 may be cited as the "Traffic Safety Act"."

Section 2. A new Section 66-7-513 NMSA 1978 is enacted to read:

"66-7-513. SAFE ROUTES TO SCHOOL PROGRAM.--

A. The "safe routes to school program" is created within the department to increase and make safer a student's ability to walk or ride a bicycle to school.

B. The program may be established to:

(1) provide assistance to the state, counties and municipalities to identify school route hazards and implement engineering improvements, including:

(a) installing sidewalks;

(b) painting crosswalks and other street and sidewalk areas;

(c) installing traffic signals;

(d) making street improvements;

(e) providing lighting;

(f) providing bus shelters, particularly in isolated or rural areas;

(g) cutting curbs for handicapped access; and

(h) other safety improvements;

(2) develop criteria, in conjunction with the department's bicycle, pedestrian and equestrian committee, school districts and law enforcement agencies and with input from parents, teachers and school administrators, to be used in evaluating the applications of the program; and

(3) include information about the safe routes to school program in public awareness campaigns about traffic safety."

SENATE BILL 556, AS AMENDED

CHAPTER 149

CHAPTER 149, LAWS 2003

AN ACT

RELATING TO EDUCATION; CREATING THE SCHOOL LIBRARY MATERIAL FUND AND REQUIRING THE INSTRUCTIONAL MATERIAL BUREAU OF THE STATE DEPARTMENT OF PUBLIC EDUCATION TO ADMINISTER THE FUND;

ESTABLISHING REQUIREMENTS FOR ADMINISTRATION AND DISTRIBUTION OF THE FUND; ESTABLISHING REQUIREMENTS FOR THE SALE, LOSS OR RETURN OF SCHOOL LIBRARY MATERIAL; REQUIRING SCHOOL DISTRICTS AND STATE INSTITUTIONS TO KEEP RECORDS OF SCHOOL LIBRARY MATERIAL.

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

Section 1. A new section of the Public School Code is enacted to read:

"SHORT TITLE.--This act may be cited as the "School Library Material Act"."

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

"DEFINITIONS.--As used in the School Library Material Act:

A. "additional student" means a student in the certified forty-day membership of the current year for a school district or state institution above the number certified in the forty-day membership of the prior year for the school district or state institution;

B. "bureau" means the instructional material bureau of the department of education;

C. "fund" means the school library material fund;

D. "library material processing" means cataloging of school library material, including in electronic format, according to nationally accepted standards, and the application of bar code labels and call-number classification labels to the material;

E. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of school library material pursuant to the School Library Material Act;

F. "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; and

G. "school library material" means books and other educational media, including online reference and periodical databases, that are made available in a school library to students for circulation and use in the library."

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

"SCHOOL LIBRARY MATERIAL FUND--CREATION.--The "school library material fund" is created in the state treasury. The purpose of the fund is to provide an account from which the department of education may distribute money to school districts and state institutions to pay for the cost of purchasing school library material. The cost of purchasing school library material may include shipping and handling charges for the delivery of school library material. The fund shall consist of appropriations, gifts, grants, donations and bequests. Money in the fund shall be appropriated to the department of education to pay for the cost of purchasing school library material. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the state superintendent or his designated representative. Money in the fund shall not revert to the general fund at the end of a fiscal year."

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

"ADMINISTRATION OF THE SCHOOL LIBRARY MATERIAL FUND--BUREAU--DUTIES.--Subject to the policies and rules of the state board, the bureau shall:

- A. administer the provisions of the School Library Material Act;
- B. enforce rules for the handling, safekeeping and distribution of school library material and money from the fund;
- C. enforce inventory and accounting procedures to be followed by school districts and state institutions; and
- D. withdraw or withhold the privilege of participating in the free use of school library material in case of noncompliance with the provisions of the School Library Material Act or rules adopted pursuant to that act."

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

"STUDENTS ELIGIBLE--DISTRIBUTION.--

A. A qualified student or person eligible to become a qualified student attending a public school or a state institution in a grade from the first through the twelfth grade of instruction is entitled to the free use of school library material. A student enrolled in an early childhood education program as defined in Section 22-13-3 NMSA 1978 is also entitled to the free use of school library material.

B. A school district or state institution shall purchase school library material as an agent for the benefit of students entitled to the free use of school library material.

C. A school district or state institution receiving school library material pursuant to the School Library Material Act is responsible for circulation of the school library material for use by eligible students and for the safekeeping of the school library material."

Section 6. A new section of the Public School Code is enacted to read:

"DISTRIBUTION OF MONEY FOR SCHOOL LIBRARY MATERIAL.--

A. On or before July 1 of each year, the department of education shall distribute from the fund at least ninety percent of the estimated entitlement for each school district or state institution as determined from the estimated forty-day membership for the next school year to each school district and state institution. The entitlement of a school district or state institution is the 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. Additional students shall be counted as six students for the purpose of the allocation.

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 and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. The department of education shall establish procedures to distribute funds directly to school districts and state institutions.

D. A school district or state institution that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain those funds for expenditure in subsequent years."

Section 7. A new section of the Public School Code is enacted to read:

"SALE OR LOSS OR RETURN OF SCHOOL LIBRARY MATERIAL.--

A. With the approval of the bureau, school library material acquired by a school district or state institution pursuant to the School Library Material Act may be sold at a price determined by officials of the school district or state institution. The selling price shall not exceed the cost of school library material to the state.

B. A school district or state institution may hold a parent, guardian or student responsible for loss, damage or destruction of school library material while the school library material is in the possession of a student. A school district may withhold the grades, diploma and transcripts of a student responsible for damage or loss of school library 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 the 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 school district shall bear the cost.

C. A school district or state institution that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain the funds for expenditure in subsequent years."

Section 8. A new section of the Public School Code is enacted to read:

"RECORD OF SCHOOL LIBRARY MATERIAL.--A school district or state institution shall keep an accurate record of school library material that includes a cost record. A school district or state institution shall comply with record-keeping procedures prescribed by the bureau."

Section 9. A new section of the Public School Code is enacted to read:

"ANNUAL REPORT.--Annually, at a time specified by the department of education, each local school district and state institution acquiring school library material pursuant to the School Library Material Act shall file a report with the department of education."

Section 10. A new section of the Public School Code is enacted to read:

"REPORTS--BUDGETS.--

A. Annually, the department of education shall submit a budget for the next fiscal year to the department of finance and administration showing expenditures

for school library material to be paid from the fund, including reasonable shipping and handling charges and library material processing expenses.

B. Upon request, the department of education shall make reports to the state board concerning the administration and execution of the School Library Material Act."

SENATE BILL 627, AS AMENDED

CHAPTER 150

CHAPTER 150, LAWS 2003

AN ACT

RELATING TO TAXATION; MAKING A DISTRIBUTION OF THE GASOLINE TAX TO CERTAIN QUALIFIED TRIBES; PROVIDING FOR A FORBEARANCE AND TAX SHARING AGREEMENT.

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

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

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

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

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

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

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

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

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

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

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

(8) the amount distributed to a qualified tribe pursuant to a gasoline tax sharing agreement entered into between the secretary of highway and transportation and the qualified tribe pursuant to the provisions of Section 67-3-8.1 NMSA 1978.

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

Section 2. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION--GASOLINE TAX SHARING AGREEMENT.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made by the department to a qualified tribe in an amount equal to forty percent of the net receipts attributable to the gasoline tax paid to the department on two million five hundred thousand gallons of gasoline each month. The distribution shall be made pursuant to a gasoline tax sharing agreement entered into by the state highway and transportation department and a qualified tribe according to the provisions of Section 67-3-8.1 NMSA 1978.

B. As used in this section, "qualified tribe" means the Pueblo of Nambe as long as it owns one hundred percent of a registered Indian tribal distributor pursuant to the Gasoline Tax Act that qualifies for a deduction pursuant to Subsection F of Section 7-13-4 NMSA 1978."

Section 3. A new Section 67-3-8.1 NMSA 1978 is enacted to read:

"67-3-8.1. SECRETARY--AUTHORITY TO ENTER INTO INTERGOVERNMENTAL AGREEMENT--GASOLINE TAX SHARING AGREEMENT--QUALIFIED TRIBE.--

A. The secretary may enter into an intergovernmental agreement that may be referred to as a "gasoline tax sharing agreement" with a qualified tribe to receive forty percent of the gasoline tax revenue paid on two million five hundred thousand

gallons of gasoline each month in exchange for the qualified tribe's agreement that the qualified tribe or a registered Indian tribal distributor owned by the tribe shall not:

(1) distribute gasoline for resale outside of the boundaries of that registered Indian tribal distributor's Indian reservation, pueblo grant or trust land located in New Mexico; and

(2) claim all or part of the deduction authorized in Subsection F of Section 7-13-4 NMSA 1978.

B. The term of a gasoline tax sharing agreement entered into pursuant to this section shall be for a period of up to ten years.

C. A gasoline tax sharing 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 the state and any other tribe.

D. Nothing in this section or in a gasoline tax sharing agreement entered into pursuant to this section shall be construed as creating rights in a third party.

E. Copies of gasoline tax sharing agreements shall be promptly transmitted to the secretary upon signing by the representatives of the governments that are parties to the agreement.

F. As used in this section:

(1) "qualified tribe" means the Pueblo of Nambe as long as it owns one hundred percent of a registered Indian tribal distributor pursuant to the Gasoline Tax Act that qualifies for a deduction pursuant to Subsection F of Section 7-13-4 NMSA 1978; and

(2) "tribe" means an Indian nation, tribe or pueblo located in New Mexico."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE CONSERVATION COMMITTEE SUBSTITUTE

FOR SENATE BILL 874

CHAPTER 151

CHAPTER 151, LAWS 2003

AN ACT

RELATING TO EDUCATION; ENACTING THE INDIAN EDUCATION ACT; PRESCRIBING POWERS AND DUTIES; CREATING A FUND; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Public School Code is enacted to read:

"SHORT TITLE.--This act may be cited as the "Indian Education Act"."

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

"PURPOSE OF ACT.--The purpose of the Indian Education Act is to:

- A. ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public schools;
- B. ensure maintenance of native languages;
- C. provide for the study, development and implementation of educational systems that positively affect the educational success of American Indian students;
- D. ensure that the department of education partners with tribes to increase tribal involvement and control over schools and the education of students located in tribal communities;
- E. encourage cooperation among the educational leadership of Arizona, Utah, New Mexico and the Navajo Nation to address the unique issues of educating students in Navajo communities that arise due to the location of the Navajo Nation in those states;
- F. provide the means for a formal government-to-government relationship between the state and New Mexico tribes and the development of relationships with the education division of the bureau of Indian affairs and other entities that serve American Indian students;

G. provide the means for a relationship between the state and urban American Indian community members to participate in initiatives and educational decisions related to American Indian students residing in urban areas;

H. ensure that parents; tribal departments of education; community-based organizations; the department of education; universities; and tribal, state and local policymakers work together to find ways to improve educational opportunities for American Indian students;

I. ensure that tribes are notified of all curricula development for their approval and support;

J. encourage an agreement regarding the alignment of the bureau of Indian affairs and state assessment programs so that comparable information is provided to parents and tribes; and

K. encourage and foster parental involvement in the education of Indian students."

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

"DEFINITION.--As used in the Indian Education Act, "tribe" means an Indian nation, tribe or pueblo located within New Mexico."

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

"STATE BOARD--TRIBES--RULEMAKING.--The state board, in consultation with tribes, may adopt and promulgate rules to implement the provisions of the Indian Education Act."

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

"INDIAN EDUCATION DIVISION--CREATED--ASSISTANT SUPERINTENDENT--DUTIES.--

A. The "Indian education division" is created within the department of education. The state superintendent shall appoint an assistant superintendent for Indian education, who shall direct the activities of the division.

B. The Indian education division shall:

(1) provide assistance to school districts and tribes to meet the educational needs of American Indian students;

(2) provide assistance to school districts and tribes in the planning, development, implementation and evaluation of curricula in native languages, culture and history designed for American Indian students;

(3) provide assistance to school districts and tribes to develop curricula and instructional materials in native languages, culture and history in conjunction and by contract with native language practitioners and tribal elders, unless the use of written language is expressly prohibited by the tribe;

(4) establish an Indian education advisory council;

(5) by January 2006, enter into agreements with each tribe or authorized tribal educational entity to share programmatic information and to coordinate technical assistance for public schools that serve American Indian students;

(6) seek funds to establish an Indian education office in the northwest corner of the state to implement agreements with each tribe or authorized tribal educational entity, monitor the progress of American Indian students and coordinate technical assistance at the public schools that serve American Indian students;

(7) require school districts to obtain a signature of approval by the tribal governments or tribal government designees residing within school district boundaries, verifying that the tribes agree to Indian education policies and procedures pursuant to federal requirements; and

(8) seek funds to establish, develop and implement the following support services for the purposes of increasing the number of American Indian teachers and principals and providing continued professional development for educational assistants, teachers and principals serving American Indian students, in conjunction with the Indian education advisory council:

(a) recruitment and retention;

(b) academic transition programs;

(c) academic financial support;

(d) teacher preparation;

(e) teacher induction; and

(f) professional development;

(9) develop curricula to provide instruction in tribal history and government and develop plans to implement these subjects into history and government courses in school districts throughout the state;

(10) ensure that native language bilingual programs are part of a school district's professional development plan, as provided in Section 22-2-2 NMSA 1978; and

(11) develop a plan to establish a post-secondary investment system for Indian students to which parents, tribes and the state may contribute."

Section 6. A new section of the Public School Code is enacted to read:

"ADVISORY COUNCIL.--

A. The "Indian education advisory council" shall consist of fourteen members as follows:

(1) four representatives from the Navajo Nation;

(2) two representatives, one from the Mescalero Apache Tribe and one from the Jicarilla Apache Nation;

(3) four representatives, two from the southern pueblos and two from the northern pueblos; and

(4) four members representing urban areas, the bureau of Indian affairs, head start organizations and the general public, at least one of whom shall be non-Indian, but all of whom shall have knowledge of and involvement in the education of Indian students.

B. On a semiannual basis, representatives from all tribes, members of the state board, the governor's office, the New Mexico office of Indian affairs, the legislature, the state superintendent and the Indian education advisory council shall meet to assist in evaluating, consolidating and coordinating all activities relating to the education of American Indian students.

C. Members of the Indian education advisory council may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act."

Section 7. A new section of the Public School Code is enacted to read:

"REPORT.--

A. The Indian education division in collaboration with the education division of the bureau of Indian affairs and other entities that serve American Indian students shall submit an annual statewide American Indian education status report to all tribes.

B. A school district with tribal lands located within its boundaries shall provide a districtwide American Indian education status report to all tribes represented within the school district boundaries.

C. The status reports shall be written in a brief format and shall include the following information, through which public school performance is measured and reported to the tribes:

(1) student achievement as measured by a statewide test approved by the state board, with results disaggregated by ethnicity;

(2) school safety;

(3) the dropout rate;

(4) attendance;

(5) parent and community involvement;

(6) educational programs targeting American Indian students;

(7) financial reports;

(8) current status of federal Indian education policies and procedures;

(9) school district initiatives to decrease the number of student dropouts and increase attendance;

(10) public school use of variable school calendars; and

(11) school district consultations with parent advisory committees."

Section 8. A new section of the Public School Code is enacted to read:

"FUND CREATED.--

A. The "Indian education fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department of education, and money in the fund is appropriated to the department to distribute awards to support the Indian Education Act.

B. The department of education shall develop procedures and rules for the award of money from the fund. Disbursement of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the state superintendent."

Section 9. REPEAL.--Sections 22-2-11 through 22-2-13 NMSA 1978 (being Laws 1975 (1st S.S.), Chapter 8, Sections 1 through 3) are repealed.

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 115, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 152

CHAPTER 152, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING THE FINE ARTS EDUCATION ACT; PROVIDING POWERS AND DUTIES; PROVIDING FUNDING FOR FINE ARTS IN PUBLIC SCHOOLS THROUGH THE FUNDING FORMULA; PROVIDING FOR PROGRAM COST CALCULATIONS.

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

Section 1. A new section of the Public School Code is enacted to read:

"SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Fine Arts Education Act"."

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

"PURPOSE.--

A. The purpose of the Fine Arts Education Act is to encourage school districts to offer opportunities for elementary school students to participate in fine arts activities, including visual arts, music, theater and dance. B. Participation in fine arts programs encourages cognitive and affective development by:

(1) focusing on a variety of learning styles and engaging students who might otherwise fail;

(2) training students in complex thinking and learning;

(3) helping students to devise creative solutions for problems;

(4) providing students new challenges; and

(5) teaching students how to work cooperatively with others and to understand and value diverse cultures."

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

"DEFINITION.--As used in the Fine Arts Education Act, "fine arts education programs" includes programs of education through which students participate in activities related to visual arts, music, theater and dance."

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

"STATE BOARD AND DEPARTMENT OF EDUCATION--POWERS AND DUTIES.--

A. The state board shall issue guidelines for the development and implementation of fine arts education programs.

B. The department of education shall:

(1) administer and enforce the provisions of the Fine Arts Education Act; and

(2) assist local school boards in developing and evaluating programs."

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

"PROGRAM PLAN AND EVALUATION.--

A. A local school board may prepare and submit to the department of education a fine arts education program plan in accordance with guidelines issued by the state board.

B. At a minimum, the plan shall include the fine arts education programs being taught, the ways in which the fine arts are being integrated into the curriculum and an evaluation component.

C. At yearly intervals, the local school board, the department of education and a parent advisory committee from the school district shall review the goals and priorities of the plan and make appropriate recommendations to the state board."

Section 6. A new section of the Public School Code is enacted to read:

"FINE ARTS EDUCATION PROGRAMS--ELIGIBILITY FOR STATE FINANCIAL SUPPORT.--

A. To be eligible for state financial support, a fine arts education program shall:

(1) provide for the educational needs of students in the areas of visual arts, music, theater or dance;

(2) integrate the fine arts into the curriculum;

(3) use certified school instructors to supervise those who are teaching the program if those persons do not hold valid teaching licenses in one or more of the disciplines included in fine arts education; and

(4) require background checks in accordance with Section 22-10-3.3 NMSA 1978.

B. A fine arts education program shall meet each requirement of Subsection A of this section and be approved by the department of education to be eligible for state financial support."

Section 7. 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 (5) in this subsection by the instructional staff training and experience index and adding the program units itemized as Paragraphs (6) through (9) 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) fine arts education;
- (6) size adjustment;
- (7) at-risk program;
- (8) enrollment growth or new district adjustment;
- (9) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers; and
- (10) national board for professional teaching standards certification.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts 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 8. A new section of the Public School Finance Act is enacted to read:

"FINE ARTS EDUCATION PROGRAM UNITS.--The number of fine arts education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Fine Arts Education Act

by the cost differential factor of 0.0166 for fiscal year 2004, 0.0332 for fiscal year 2005 and 0.05 for fiscal year 2006 and succeeding fiscal years."

Section 9. A new section of the Public School Finance Act, Section 22-8-23.4 NMSA 1978, is enacted to read:

"22-8-23.4. NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS--CERTIFIED TEACHERS PROGRAM UNITS.--The number of program units for teachers certified by the national board for professional teaching standards is determined by multiplying by one and one-half the number of teachers certified by the national board for professional teaching standards employed by the school district on or before the fortieth day of the school year and verified by the department. Department approval of these units shall be contingent on verification by the school district that these teachers are receiving a one-time salary differential equal to or greater than the amount generated by the units multiplied by the program unit value during the fiscal year in which the school district will receive these units."

HOUSE BILL 12, AS AMENDED

CHAPTER 153

CHAPTER 153, LAWS 2003

AN ACT

RELATING TO PUBLIC EDUCATION; PROVIDING PUBLIC SCHOOL REFORMS; ENACTING THE ASSESSMENT AND ACCOUNTABILITY ACT; CREATING AN ASSESSMENT AND ACCOUNTABILITY SYSTEM BASED ON CHALLENGING ACADEMIC CONTENT AND PERFORMANCE STANDARDS AND RIGOROUS TESTING AGAINST THOSE STANDARDS TO DETERMINE ANNUAL YEARLY PROGRESS OF STUDENTS, PUBLIC SCHOOLS, SCHOOL DISTRICTS AND THE STATE DEPARTMENT OF PUBLIC EDUCATION; PROVIDING FOR SANCTIONS AND REWARDS; PROVIDING FOR IMPROVEMENT INDICATORS IN ADDITION TO THE ASSESSMENT AND ACCOUNTABILITY SYSTEM; PROVIDING FOR MORE STRINGENT COMPETENCY REQUIREMENTS FOR TEACHERS AND SCHOOL PRINCIPALS; PROVIDING FOR LICENSURE OF CERTAIN SCHOOL EMPLOYEES; CHANGING CERTAIN GOVERNANCE STRUCTURES; PROVIDING FOR SCHOOL COUNCILS; PROVIDING POWERS AND DUTIES; ENACTING THE FAMILY AND YOUTH RESOURCE ACT; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

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

"22-1-1. PUBLIC SCHOOL CODE.--Chapter 22 NMSA 1978 may be cited as the "Public School Code"."

Section 2. A new section of the Public School Code, Section 22-1-1.2 NMSA 1978, is enacted to read:

"22-1-1.2. LEGISLATIVE FINDINGS AND PURPOSE.--

A. The legislature finds that no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed, and the system must meet the needs of all children by recognizing that student success for every child is the fundamental goal.

B. The legislature finds further that the key to student success in New Mexico is to have a multicultural education system that:

(1) attracts and retains quality and diverse teachers to teach New Mexico's multicultural student population;

(2) holds teachers, students, schools, school districts and the state accountable;

(3) integrates the cultural strengths of its diverse student population into the curriculum with high expectations for all students;

(4) recognizes that cultural diversity in the state presents special challenges for policymakers, administrators, teachers and students; and

(5) elevates the importance of public education in the state by clarifying the governance structure at different levels.

C. The legislature finds further that the teacher shortage in this country has affected the ability of New Mexico to compete for the best teachers, and that unless the state and school districts find ways to mentor beginning teachers, intervene with teachers while they still show promise, improve the job satisfaction of quality teachers and elevate the teaching profession by shifting to a professional educator licensing and salary system, public schools will be unable to recruit and retain the highest quality teachers in the teaching profession in New Mexico.

D. The legislature finds further that a well-designed, well-implemented and well-maintained assessment and accountability system is the linchpin of public school reform and must ensure that:

(1) students who do not meet or exceed expectations will be given individual attention and assistance through extended learning programs and individualized tutoring;

(2) teachers who do not meet performance standards must improve their skills or they will not continue to be employed as teachers;

(3) public schools make adequate yearly progress toward educational excellence; and

(4) school districts and the state are prepared to actively intervene and improve failing public schools.

E. The legislature finds further that improving children's reading and writing abilities and literacy must remain a priority of the state.

F. The legislature finds further that the public school governance structure needs to change to provide accountability from the bottom up instead of from the top down. Each school principal, with the help of school councils made up of parents and teachers, must be the instructional leader in the public school, motivating and holding accountable both teachers and students. Each local superintendent must function as the school district's chief executive officer and have responsibility for the day-to-day operations of the school district, including personnel and student disciplinary decisions.

G. It is the purpose of this 2003 public school reform legislation to provide the framework to implement the legislative findings to ensure student success in New Mexico."

Section 3. Section 22-1-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 2, as amended) is repealed and a new Section 22-1-2 NMSA 1978 is enacted to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "adequate yearly progress" means the measure adopted by the state board based on federal requirements to assess the progress that a student, a public school or school district or the state makes toward improving student achievement;

B. "commercial advertiser" means a person who advertises a product or service for profit or not for profit and has a permitted advertisement;

C. "department" means the state department of public education;

D. "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;

E. "home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;

F. "instructional support provider" means a person who is employed to support the instructional program of a school district, including educational assistant, librarian, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, interpreter for the deaf and diagnostician;

G. "licensed school employee" means teachers, school administrators and instructional support providers;

H. "local school board" means the policy-setting body of a school district;

I. "local superintendent" means the chief executive officer of a school district;

J. "parent" includes a guardian or other person having custody and control of a school-age person;

K. "private school" means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board;

L. "public school" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school;

M. "school" means a supervised program of instruction designed to educate a student in a particular place, manner and subject area;

N. "school administrator" means a person licensed to administer in a school district and includes school principals and central district administrators;

O. "school-age person" means a 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 a person who is classified as special education membership as defined in Section 22-8-2 NMSA 1978 or as a resident of a state institution;

P. "school building" means a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired

or constructed by the school district as necessary to carry out the functions of the school district;

Q. "school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;

R. "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;

S. "school employee" includes licensed and nonlicensed employees of a school district;

T. "school principal" means the chief instructional leader and administrative head of a public school;

U. "school year" means the total number of contract days offered by public schools in a school district during a period of twelve consecutive months;

V. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the visually handicapped, New Mexico school for the deaf, New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, Las Vegas medical center and any other state agency responsible for educating resident children;

W. "state board" means the state board of education;

X. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

Y. "state superintendent" means the superintendent of public instruction;

Z. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

AA. "teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program;

BB. "certified school instructor" means a teacher or instructional support provider; and

CC. "certified school employee" or "certified school personnel" means a licensed school employee."

Section 4. Section 22-1-4 NMSA 1978 (being Laws 1975, Chapter 338, Section 1, as amended by Laws 2001, Chapter 239, Section 1 and by Laws 2001, Chapter 244, Section 1) is amended to read:

"22-1-4. FREE PUBLIC SCHOOLS--EXCEPTIONS--WITHDRAWING AND ENROLLING--OPEN ENROLLMENT.--

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 pursuant to the provisions of 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 pursuant to the provisions of 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. In adopting and promulgating rules 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 or to the student's score on a student achievement test administered according to the statewide assessment and accountability system.

E. A local school board shall adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules shall include:

(1) definition of the school district boundary and the boundaries of attendance areas for each public school;

(2) for each public school, definition of the boundaries of areas outside the school district boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route as determined pursuant to Section 22-16-4 NMSA 1978 if enrolled, which areas shall be designated as "walk zones";

(3) priorities for enrollment of students as follows:

(a) first, students residing within the school district and within the attendance area of a public school;

(b) second, students enrolled in a school ranked as a school that needs improvement or a school subject to corrective action;

and (c) third, students who previously attended the public school;

(d) fourth, all other applicants;

(4) establishment of maximum allowable class size if smaller than that permitted by law; and

(5) rules pertaining to grounds for denial of enrollment or re-enrollment at schools within the school district and the school district's hearing and appeals process for such a denial. Grounds for denial of enrollment or re-enrollment shall be limited to:

(a) a student's expulsion from any school district or private school in this state or any other state during the preceding twelve months; or

(b) a student's behavior in another school district or private school in this state or any other state during the preceding twelve months that is detrimental to the welfare or safety of other students or school employees.

F. In adopting and promulgating rules governing enrollment and re-enrollment at public schools other than charter schools within the district, a local school board may establish additional enrollment preferences for rules admitting students in accordance with the third and fourth priorities of enrollment set forth in Subparagraphs (c) and (d) of Paragraph (3) of Subsection E of this section. The additional enrollment preferences may include:

(1) after-school child care for students;

(2) child care for siblings of students attending the public school;

(3) children of employees employed at the public school;

(4) extreme hardship;

(5) location of a student's previous school;

(6) siblings of students already attending the public school; and

(7) student safety.

G. As long as the maximum allowable class size established by law or by rule of a local school board, whichever is lower, is not met or exceeded in a public

school by enrollment of first- and second-priority persons, the public school shall enroll other persons applying in the priorities stated in the school district rules adopted pursuant to Subsections E and F of this section. If the maximum would be exceeded by enrollment of an applicant in the second through fourth priority, the public school shall establish a waiting list. As classroom space becomes available, persons highest on the waiting list within the highest priority on the list shall be notified and given the opportunity to enroll."

Section 5. Section 22-2-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 5, as amended by Laws 2001, Chapter 286, Section 1 and by Laws 2001, Chapter 299, Section 5) 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, including vocational programs that are part of a juvenile construction industries initiative for juveniles who are committed to the custody of the children, youth and families department;

C. appoint a state superintendent;

D. purchase and loan instructional material to students pursuant to the Instructional Material Law and adopt rules 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 licenses to teachers, instructional support providers and school administrators according to law and according to a system of classification adopted and published by the state board;

H. deny, suspend or revoke a license according to law for incompetency, moral turpitude or 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 the New Mexico military institute;

K. adopt rules 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. require a public 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;

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

O. 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;

P. require prior approval for an 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;

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

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

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

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

U. assess and evaluate public schools for accreditation purposes to determine the adequacy of student gain in standard required subject matter, adequacy of student activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

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

W. establish and implement a plan that provides for technical assistance to local school boards through workshops and other in-service training methods;

X. 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;

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

Z. develop a systemic framework for professional development that provides training to ensure quality teachers and school principals and that improves and enhances student achievement. The state board shall work with school employees, the commission on higher education and institutions of higher education to establish the framework. The framework shall include:

(1) the criteria for school districts to apply for professional development funds, including an evaluation component that will be used by the department in approving school district professional development plans; and

(2) guidelines for developing extensive professional development activities for school districts that:

(a) improve teachers' knowledge of the subjects they teach and the ability to teach those subjects to all of their students;

(b) are an integral part of the public school and school district plans for improving student achievement;

(c) provide teachers, school administrators and instructional support providers with the strategies, support, knowledge and skills to help all students meet New Mexico academic standards;

(d) are high quality, sustained, intensive and focused on the classroom; and

(e) are developed and evaluated regularly with extensive participation of school employees and parents;

AA. approve education curricula and programs offered in all two-year public post-secondary educational institutions, except those in Chapter 21, Article 12 NMSA 1978, that lead to alternative licenses for degreed persons pursuant to Section 22-10A-8 NMSA 1978 or licensure for educational assistants; and

BB. withhold program approval from a college of education or teacher preparation program that fails to offer a course on teaching reading that:

(1) is based upon current scientifically based reading research;

(2) aligns with state board-adopted reading standards;

(3) includes strategies and assessment measures to ensure that beginning teachers are proficient in teaching reading; and

(4) was designed after seeking input from experts in the education field."

Section 6. Section 22-2-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 9, as amended) is amended to read:

"22-2-6. DEPARTMENT--DUTIES.--Subject to the policies of the state board and the supervision and direction of the state superintendent, the department shall have the following duties:

A. supervise all schools and school officials coming under the jurisdiction of the state board, including taking over the control and management of a public school or school district that has failed to meet requirements of law or state board rules or standards;

B. issue a state identification number for each public school student for use in the accountability data system;

C. advise boards of regents of state educational institutions on matters concerning the Public School Code;

D. prescribe, print and distribute forms to carry out the duties of the state board pursuant to the Public School Code;

E. annually, prior to December 1, prepare and publish a report on public and private education in the state and distribute the report to the governor and the legislature;

F. keep accurate records of all money received by the state superintendent or the department;

G. publish and distribute copies of the Public School Code and rules promulgated by the state board to local school boards in the state;

H. confer with local school boards and licensed school employees on matters concerning education in the state;

I. prepare and distribute patriotic material to schools in the state; and

J. evaluate all educational programs in state institutions under the authority of the secretary of health and the secretary of children, youth and families."

Section 7. Section 22-2-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 11) is amended to read:

"22-2-8. SCHOOL STANDARDS.--The state board shall prescribe standards for all public schools in the state. A copy of these standards shall be furnished by the department to each local school board, local superintendent and school principal. The standards shall include standards for the following areas:

A. curriculum, including academic content and performance standards;

B. organization and administration of education;

C. the keeping of records, including financial records prescribed by the department;

D. membership accounting;

E. teacher preparation;

F. the physical condition of public school buildings and grounds; and

G. educational facilities of public schools, including laboratories and libraries."

Section 8. Section 22-2-14 NMSA 1978 (being Laws 1978, Chapter 129, Section 1, as amended) is amended to read:

"22-2-14. LOCAL SCHOOL BOARDS--PUBLIC SCHOOLS--SUSPENSION--PROCEDURES.--

A. Money budgeted by a school district shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and rules as prescribed by the state board. The state superintendent shall give written notification to a local school board, local superintendent and school principal, as applicable, of any failure to meet requirements by any part of the school district under the control of the local school board. The notice shall specify the deficiency. Instructional units or administrative functions may be disapproved for such deficiencies. The state superintendent shall disapprove instructional units or administrative functions that he determines to be detrimental to the educational process.

B. Within thirty days after receipt of the notice of failure to meet requirements, the local school board, local superintendent and school principal, as applicable, shall:

(1) comply with the specific and attendant requirements in order to remove the cause for disapproval; or

(2) submit plans satisfactory to the state superintendent to meet requirements and remove the cause for disapproval.

C. The state board shall suspend from authority and responsibility a local school board, local superintendent or school principal that has had notice of disapproval and fails to comply with procedures of Subsection B of this section. The state superintendent shall act in lieu of the suspended local school board, local superintendent or school principal until the state board removes the suspension.

D. To suspend a local school board, local superintendent or school principal, the state board shall deliver to the local school board an alternative order of suspension, stating the cause for the suspension and the effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date and place for a public hearing, prior to the beginning of suspension, to be held by the state board, at which the local school board, local superintendent or school principal may appear and show cause why the suspension should not be put into effect. Within five days after the hearing, the state board shall make permanent, modify or withdraw the alternative order.

E. The state superintendent may suspend a local school board, local superintendent or school principal pending a hearing before the state board when the local school board, local superintendent or school principal has been notified of disapproval and when the state superintendent has sufficient reason to believe that the

educational process in the school district or public school has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before the question of suspension can be presented to the state board for a hearing.

F. The state superintendent, while acting in lieu of a suspended local school board, local superintendent or school principal, shall execute all the legal authority of the local school board, local superintendent or school principal and assume all the responsibilities of the local school board, local superintendent or school principal.

G. The provisions of this section shall be invoked at any time the state superintendent finds the school district or public school has failed to attain and maintain the requirements of law or state board standards and rules."

Section 9. Section 22-2-15 NMSA 1978 (being Laws 1978, Chapter 129, Section 2, as amended) is amended to read:

"22-2-15. HEARINGS--SUSPENSION CONTINUANCE AND DISCONTINUANCE--APPEALS.--

A. Within ten days after suspension, or within a reasonable time as the suspended local school board, local superintendent or school principal may request, the state board shall give a hearing to the local school board, local superintendent or school principal. At this hearing, the local school board, local superintendent or school principal may appear and show cause why the suspension should not be continued. The department employees who conducted the evaluations upon which the suspension was based shall appear and give testimony.

B. After the hearing, the state board shall continue or discontinue the suspension of the local school board, local superintendent or school principal.

C. A local school board, local superintendent or school principal aggrieved by the decision of the state board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 10. A new section of the Public School Code, Section 22-2A-1 NMSA 1978, is enacted to read:

"22-2A-1. SHORT TITLE.--Chapter 22, Article 2A NMSA 1978 may be cited as the "Assessment and Accountability Act"."

Section 11. A new section of the Public School Code, Section 22-2A-2 NMSA 1978, is enacted to read:

"22-2A-2. PURPOSES.--The purposes of the Assessment and Accountability Act are to comply with federal accountability requirements; to provide the means whereby

parents, students, public schools and the public can assess the progress of students in learning and schools in teaching required academic content; and to institute a system in which public schools, school districts and the department are held accountable for ensuring student success."

Section 12. A new section of the Public School Code, Section 22-2A-3 NMSA 1978, is enacted to read:

"22-2A-3. ACADEMIC CONTENT AND PERFORMANCE STANDARDS--STATE BOARD POWERS AND DUTIES.--

A. The state board shall adopt academic content and performance standards for grades one through twelve in the following areas:

- (1) mathematics;
- (2) reading and language arts;
- (3) science; and
- (4) social studies.

B. The state board may adopt content and performance standards in other subject areas.

C. Academic content and performance standards shall be sufficiently academically challenging to meet or exceed federal requirements.

D. The department shall measure the performance of every public school in New Mexico. Public schools achieving the greatest improvement in adequate yearly progress shall be eligible for supplemental incentive funding. The state board shall establish the corrective actions and interventions necessary for public schools that do not achieve adequate yearly progress."

Section 13. A new section of the Public School Code, Section 22-2A-4 NMSA 1978, is enacted to read:

"22-2A-4. STATEWIDE ASSESSMENT AND ACCOUNTABILITY SYSTEM--INDICATORS--REQUIRED TESTS--ALTERNATIVE TESTS--LIMITS ON ALTERNATIVES TO ENGLISH LANGUAGE READING TEST.--

A. The state board shall establish a statewide assessment and accountability system that is aligned with the state academic content and performance standards and that measures adequate yearly progress for each student, public school and school district. Adequate yearly progress shall be determined primarily by student

academic achievement, as demonstrated by statewide standards-based academic performance tests; however, the state board may include other indicators of adequate yearly progress, including graduation rates for high schools and attendance for elementary and middle schools.

B. The academic assessment program for adequate yearly progress shall test student achievement as follows by the school year indicated:

(1) for grades kindergarten through two, diagnostic and standards-based tests on reading that include phonemic awareness, phonics and comprehension by the 2003-2004 school year;

(2) for grades three through nine and for grade eleven, standards-based academic performance tests in mathematics, reading and language arts and social studies by the 2005-2006 school year; provided that testing in ninth grade and testing in social studies shall not occur until the legislature has provided funding for test development and implementation;

(3) for grades four, six, eight and eleven, standards-based academic performance writing tests by the 2005-2006 school year; and

(4) for one of grades three through five and six through nine and for grade eleven, standards-based academic performance tests in science by the 2007-2008 school year.

C. The department shall involve appropriate licensed school employees in the development of the standards-based academic performance tests.

D. All students shall participate in the academic assessment program. The state board shall adopt standards for reasonable accommodations in academic testing for students with disabilities and limited English proficiency, including when and how accommodations may be applied. The legislative education study committee shall review the standards prior to adoption by the state board.

E. Students who have been determined to be limited English proficient may be allowed to take the standards-based academic performance test in their primary language. A student who has attended school for three consecutive years in the United States shall participate in the English language reading test unless granted a waiver by the department based on criteria established by the state board. An English language reading test waiver may be granted only for a maximum of two additional years and only on a case-by-case basis."

Section 14. A new section of the Public School Code, Section 22-2A-5 NMSA 1978, is enacted to read:

"22-2A-5. STUDENT ACHIEVEMENT RATINGS--CALCULATION OF ADEQUATE YEARLY PROGRESS.--The state board shall adopt the process and methodology for calculating adequate yearly progress. The statewide standards-based academic performance tests used to assess adequate yearly progress shall be valid and reliable and shall conform with nationally recognized professional and technical standards. Academic performance shall be measured by school and by the following subgroups:

- A. ethnicity;
- B. race;
- C. limited English proficiency;
- D. students with disabilities; and
- E. poverty."

Section 15. Section 22-2-8.6 NMSA 1978 (being Laws 1986, Chapter 33, Section 7, as amended) is recompiled as Section 22-2A-6 NMSA 1978 and is amended to read:

"22-2A-6. REMEDIATION PROGRAMS-PROMOTION POLICIES--RESTRICTIONS.--

A. Remediation programs, academic improvement programs and promotion policies shall be aligned with alternative school-district-determined assessment results and requirements of the assessment and accountability program.

B. Local school boards shall approve school district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who fail to attain adequate yearly progress. The cost of remediation programs and academic improvement programs shall be borne by the school district. Remediation programs and academic improvement programs shall be incorporated into the school district's educational plan for student success and filed with the department.

C. The cost of summer and extended day remediation programs and academic improvement programs offered in grades nine through twelve shall be borne by the parent; however, where parents are determined to be indigent according to guidelines established by the state board, the school district shall bear those costs.

D. Diagnosis of weaknesses identified by a student's academic achievement may serve as criteria in assessing the need for remedial programs or retention.

E. A parent shall be notified no later than the end of the second grading period that his child is failing to make adequate yearly progress, and a conference consisting of the parent and the teacher shall be held to discuss possible remediation programs available to assist the student in attaining adequate yearly progress. Specific academic deficiencies and remediation strategies shall be explained to the student's parent and a written plan developed containing timelines, academic expectations and the measurements to be used to verify that a student has overcome his academic deficiencies. Remediation programs and academic improvement programs include tutoring, extended day or week programs, summer programs and other research-based models for student improvement.

F. At the end of grades one through seven, three options are available, dependent on a student's adequate yearly progress:

(1) the student has made adequate yearly progress and shall enter the next higher grade;

(2) the student has not made adequate yearly progress and shall participate in the required level of remediation. Upon certification by the school district that the student has made adequate yearly progress, he shall enter the next higher grade; or

(3) the student has not made adequate yearly progress upon completion of the prescribed remediation program and upon the recommendation of the teacher and school principal shall either be:

(a) retained in the same grade for no more than one school year with an academic improvement plan developed by the student assistance team in order to meet adequate yearly progress, at which time the student shall enter the next higher grade; or

(b) promoted to the next grade if the parent refuses to allow his child to be retained pursuant to Subparagraph (a) of this paragraph. In this case, the parent shall sign a waiver indicating his desire that the student be promoted to the next higher grade with an academic improvement plan designed to address specific academic deficiencies. The academic improvement plan shall be developed by the student assistance team outlining timelines and monitoring activities to ensure progress toward overcoming those academic deficiencies. Students failing to make adequate yearly progress at the end of that year shall then be retained in the same grade for no more than one year in order to have additional time to master the required content standards.

G. At the end of the eighth grade, a student who fails to make adequate yearly progress shall be retained in the eighth grade for no more than one school year to make adequate yearly progress or if the student assistance team determines that retention of the student in the eighth grade will not assist the student make adequate

yearly progress, the team shall design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary educational institution. If a student is retained in the eighth grade, the student assistance team shall develop a specific academic improvement plan that clearly delineates the student's academic deficiencies and prescribes a specific remediation plan to address those academic deficiencies.

H. A student who fails to make adequate yearly progress for two successive school years shall be referred to the student assistance team for placement in an alternative program designed by the school district. Alternative program plans shall be filed with the department.

I. Promotion and retention decisions affecting a student enrolled in special education shall be made in accordance with the provisions of the individual educational plan established for that student.

J. For the purposes of this section:

(1) "academic improvement plan" means a written document developed by the student assistance team that describes the specific content standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs such as summer school, extended day or week school and tutoring;

(2) "alternative school-district-determined assessment results" means the results obtained from student assessments developed by a local school board and conducted at an elementary grade level or middle school level;

(3) "educational plan for student success" means a student-centered tool developed to define the role of the academic improvement plan within the school district that addresses methods to improve a student's learning and success in school and that identifies specific measures of a student's progress; and

(4) "student assistance team" means a group consisting of a student's:

(a) teacher;

(b) school counselor;

(c) school administrator; and

(d) parent."

Section 16. A new section of the Public School Code, Section 22-2A-7 NMSA 1978, is enacted to read:

"22-2A-7. ADEQUATE YEARLY PROGRESS--SCHOOL IMPROVEMENT PLANS--CORRECTIVE ACTION.--

A. A public school that fails to make adequate yearly progress for two consecutive school years shall be ranked as a school that needs improvement.

B. Within ninety days of being notified that a public school within the school district has been ranked as a public school that needs improvement, the school district shall submit an improvement plan for that public school to the department. In developing the improvement plan, the local superintendent, the president of the local school board and the school principal of the public school that needs improvement shall hold a public meeting to inform parents and the public of the public school's rank. The meeting shall be used to elicit suggestions from parents and the public on how to improve the public school. After the public meeting, the school district shall develop the public school's improvement plan, and the local school board shall approve the improvement plan before it is submitted to the department. The improvement plan shall be approved by the department within thirty days of its submission.

C. The improvement plan shall include:

(1) documentation of performance measures in which the public school failed to make adequate yearly progress;

(2) measurable objectives to indicate the action that will be taken to address failed measures;

(3) benchmarks to be used to indicate progress in meeting academic content and performance standards;

(4) an estimate of the time and the resources needed to achieve each objective in the improvement plan;

(5) the support services that shall be provided to students and applications for federal and state funds; and

(6) any other information the public school that needs improvement, the local superintendent, the local school board or the department deems necessary.

D. A public school that needs improvement may apply to the department for financial or other assistance in accordance with the improvement plan. The public school shall make application for assistance substantially in the form required by the department. The department shall evaluate applications for assistance and may recommend changes to an application or to an improvement plan if warranted by the final application. The department shall consider innovative methods to assist the public school in meeting its improvement plan, including department or other school employees to serve as a mobile assistance team to provide administrative, classroom,

human resource and other assistance to the public school that needs improvement as needed and as provided in applications approved by the department.

E. If a public school fails to make adequate yearly progress for two or more consecutive school years, it shall provide transportation or pay the cost of transportation, within available funds, for students who choose to enroll in a higher ranked public school.

F. If a public school fails to make adequate yearly progress for three or more consecutive school years, it shall provide supplemental services, including after-school programs, tutoring and summer services, within available funds.

G. The state board shall adopt rules that govern the priority for students for whom supplemental services shall be provided and for students for whom transportation costs are paid.

H. If a public school fails to make adequate yearly progress for four consecutive school years, it shall be ranked as a public school subject to corrective action and the school district, in conjunction with the department, shall take one or more of the following actions in addition to earlier improvements:

- (1) replace staff as allowed by law;
- (2) implement a new curriculum;
- (3) decrease management authority of the public school;
- (4) appoint an outside expert to advise the public school;
- (5) extend the school day or year; or
- (6) change the public school's internal organizational structure.

I. If a public school fails to make adequate yearly progress for five consecutive school years, the school district, in conjunction with the department, shall take one or more of the following actions in addition to other improvements:

- (1) reopen the public school as a charter school;
- (2) replace all or most of the staff as allowed by law;
- (3) turn over the management of the public school to the
department; or
- (4) make other governance changes.

J. A school district that fails to make adequate yearly progress for two consecutive school years may be subject to the same requirements as a public school that needs improvement or the same requirements as a public school subject to corrective action, as determined by the state board. A school district that fails to make adequate yearly progress for four consecutive school years shall be subject to corrective action.

K. The state or a school district shall not enter into management contracts with private entities for the management of a public school or a school district subject to corrective action."

Section 17. A new section of the Public School Code, Section 22-2A-8 NMSA 1978, is enacted to read:

"22-2A-8. ADEQUATE YEARLY PROGRESS--SUPPLEMENTAL INCENTIVE FUNDING--STATE PROGRAM FOR OTHER ACHIEVEMENT.--

A. The state board shall institute an "adequate yearly progress program" that measures public schools' improvements in adequate yearly progress. The public schools that show the greatest improvement in adequate yearly progress shall be eligible for supplemental funding from the incentives for school improvement fund, including allowable federal funds.

B. The state board may institute a "state improving schools program" that measures public school improvement by adequate yearly progress and other indicators, including school safety; dropout rate; parent and community involvement; and, if not used to determine adequate yearly progress, graduation and attendance rates. Those indicators may be weighed against socioeconomic variables such as the percentage of student mobility rates, the percentage of limited English proficient students using criteria established by the federal office of civil rights and the percentage of students eligible for free or reduced-fee lunches and other factors determined by the state board. Public schools that show the greatest improvement through the use of additional indicators may be eligible for supplemental funding from the incentives for school improvement fund. Funding for the state improving schools program shall include federal funds only if allowed by federal law or rule."

Section 18. A new section of the Public School Code, Section 22-2A-9 NMSA 1978, is enacted to read:

"22-2A-9. INCENTIVES FOR SCHOOL IMPROVEMENT FUND--CREATED--DISTRIBUTIONS.--

A. The "incentives for school improvement fund" is created in the state treasury. The fund includes appropriations, federal allocations for the purposes of the fund, income from investment of the fund, gifts, grants and donations. Balances in the fund shall not revert to any other fund at the end of any fiscal year. The fund shall be

administered by the department, and money in the fund is appropriated to the department to provide supplemental incentive funding for the adequate yearly progress program and the state improving schools program. No more than three percent of the fund may be retained by the department for administrative purposes. Money in the fund shall be expended on warrants of the secretary of finance and administration pursuant to vouchers signed by the state superintendent or his authorized representative.

B. The state board shall adopt a formula for distributing incentive funding from the fund. Distributions for the adequate yearly progress program shall account for at least sixty percent of the fund, including federal funds if those funds are restricted to adequate yearly progress improvements. Up to forty percent of the fund, not including restricted federal funds, may be used for the state improving schools program. The total number of public schools that receive supplemental funding shall not constitute more than fifteen percent of the student membership in the state. Distributions shall be made proportionately to public schools that qualify.

C. Each public school's school council shall determine how the supplemental funding shall be used. The money received by a public school shall not be used for salaries, salary increases or bonuses, but may be used to pay substitute teachers when teachers attend professional development activities."

Section 19. A new section of the Public School Code, Section 22-2A-10 NMSA 1978, is enacted to read:

"22-2A-10. SCHOOLS IN NEED OF IMPROVEMENT FUND--CREATED.--

A. The "schools in need of improvement fund" is created in the state treasury. The fund includes appropriations, federal allocations for the purposes of the fund, income from investment of the fund, gifts, grants and donations. Balances in the fund shall not revert to any other fund at the end of any fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide assistance to public schools in need of improvement and public schools subject to corrective action. No more than three percent of the fund may be retained by the department for administrative purposes. Money in the fund shall be expended on warrants of the secretary of finance and administration pursuant to vouchers signed by the state superintendent or his authorized representative.

B. Distributions from the fund shall be by application approved by the department based on a public school's approved improvement plan as provided in Section 22-2A-7 NMSA 1978."

Section 20. A new section of the Public School Code, Section 22-2A-11 NMSA 1978, is enacted to read:

"22-2A-11. ASSESSMENT AND ACCOUNTABILITY SYSTEM REPORTING--PARENT SURVEY--DATA SYSTEM--FISCAL INFORMATION.--

A. The state board shall adopt the format for reporting individual student assessments to parents. The student assessments shall report each student's progress and academic needs as measured against state standards.

B. The state board shall adopt the format for reporting annual yearly progress of public schools, school districts and the department. If the state board has adopted a state improving schools program, the annual accountability report shall include the results of that program for each public school. The annual accountability report format shall be clear, concise and understandable to parents and the general public. All annual accountability reports shall ensure that the privacy of individual students is protected.

C. Local school boards may establish additional indicators through which to measure the school district's performance in areas other than adequate yearly progress.

D. The school district's 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 employees, including the school principal; and
- (6) parents' views of teaching staff expectations for the students.

E. The state board shall develop no more than ten of the survey questions, which shall be reviewed by the legislative education study committee prior to implementation. No more than five survey questions shall be developed by the local school board, and no more than five survey questions shall be developed by the staffs of each public school; provided that at least one-half of those questions shall be

developed by teachers rather than school 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 within thirty days of receipt and shall be returned to the respective schools to be disseminated to all parents.

F. The school district's annual accountability report 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.

G. The annual accountability report shall include the names of those local school board members who failed to attend annual mandatory training.

H. The annual accountability report shall include data on expenditures for central office administration and expenditures for the public schools of the school district.

I. The department shall create an accountability data system through which data from each public school and each school district may be compiled and reviewed. The department shall provide the resources to train school district personnel in the use of the accountability data system.

J. The department shall verify data submitted by the school districts.

K. At the end of fiscal year 2005, after the budget approval cycle, the department shall produce a report to the legislature that shows for all school districts using performance-based program budgeting the relationship between that portion of a school district's program cost generated by each public school in the school district and the budgeted expenditures for each public school in the school district as reported in the district's performance-based program budget. At the end of fiscal year 2006 and subsequent fiscal years, after the budget approval cycle, the department shall report on this relationship in all public schools in all school districts in the state.

L. When all public schools are participating in performance-based budgeting, the department shall recommend annually to the legislature for inclusion in the general appropriation act the maximum percentage of appropriations that may be expended in each school district for central office administration.

M. The department shall disseminate its statewide accountability report to school districts; the governor, legislators and other policymakers; and business and economic development organizations."

Section 21. Section 22-5-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 28, as amended) is amended to read:

"22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES.--A local school board shall have the following powers or duties:

- A. subject to the rules of the state board, develop educational policies for the school district;
- B. employ a local superintendent for the school district and fix his salary;
- C. review and approve the school district budget;
- D. acquire, lease and dispose of property;
- E. have the capacity to sue and be sued;
- F. acquire property by eminent domain pursuant to the procedures provided in the Eminent Domain Code;
- G. issue general obligation bonds of the school district;
- H. provide for the repair and maintain all property belonging to the school district;
- I. for good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school boards;
- J. except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code;
- K. adopt rules pertaining to the administration of all powers or duties of the local school board;
- L. 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 school district or the public school to which it is given; and
- M. offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement or destruction of school district property. All such rewards shall be paid from school district funds in accordance with rules promulgated by the state board."

Section 22. Section 22-5-6 NMSA 1978 (being Laws 1971, Chapter 199, Section 1, as amended) is amended to read:

"22-5-6. NEPOTISM PROHIBITED.--

A. A local superintendent shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law of a member of the local school board or the local superintendent. The local school board may waive the nepotism rule for family members of a local superintendent.

B. Nothing in this section shall prohibit the continued employment of a person employed on or before March 1, 2003."

Section 23. Section 22-5-11 NMSA 1978 (being Laws 1986, Chapter 33, Section 12, as amended) is amended to read:

"22-5-11. SCHOOL DISTRICT SALARY SYSTEM.--

A. Prior to the beginning of each school year, each local superintendent shall file with the department the school district salary system, which salary system shall incorporate any salary increases or compensation measures specifically mandated by the legislature. Salaries for teachers and school administrators shall be aligned with the licensure framework provided for in the School Personnel Act.

B. A local superintendent shall not reduce the school district salary system established pursuant to Subsection A of this section without the prior written approval of the state superintendent. The state superintendent shall give written notice to the legislative finance committee, the legislative education study committee and the department of finance and administration of approved reduction of any school district's salary system, including the reasons for the request for reduction and the grounds for approval."

Section 24. A new section of the Public School Code, Section 22-5-13 NMSA 1978, is enacted to read:

"22-5-13. LOCAL SCHOOL BOARD TRAINING.--The department shall develop a mandatory training course for local school board members that explains state board rules, department policies and procedures, statutory powers and duties of local school boards, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the department. The department shall notify local school board members of the dates of the training course, the last of which shall not be later than three months after a local school board election."

Section 25. A new section of the Public School Code, Section 22-5-14 NMSA 1978, is enacted to read:

"22-5-14. LOCAL SUPERINTENDENT--POWERS AND DUTIES.--

A. The local superintendent is the chief executive officer of the school district.

B. The local superintendent shall:

(1) carry out the educational policies and rules of the state board and local school board;

(2) administer and supervise the school district;

(3) employ, fix the salaries of, assign, terminate or discharge all employees of the school district;

(4) prepare the school district budget based on public schools' recommendations for review and approval by the local school board and the department. The local superintendent shall tell each school principal the approximate amount of money that may be available for his school and provide a school budget template to use in making school budget recommendations; and

(5) perform other duties as required by law, the department or the local school board.

C. The local superintendent may apply to the state board for a waiver of certain provisions of the Public School Code relating to length of school day, staffing patterns, subject area or the purchase of instructional materials for the purpose of implementing a collaborative school improvement program for an individual public school."

Section 26. Section 22-5-4.6 NMSA 1978 (being Laws 1990, Chapter 52, Section 3, as amended) is recompiled as Section 22-5-15 NMSA 1978 and is amended to read:

"22-5-15. COLLABORATIVE SCHOOL IMPROVEMENT PROGRAMS.--

A. A local superintendent may approve an individual public school's plan to implement a collaborative school improvement program upon a finding that the plan is in the best interest of the public school and is supported by the participating teaching staff.

B. The input and concerns of parents, students, school employees and members of the community shall be solicited and considered in the development and adoption of a collaborative school improvement program.

C. If necessary for the implementation of a collaborative school improvement program, the local superintendent may apply to the state board for a waiver of Public School Code provisions relating to length of school day, staffing patterns, subject areas or purchase of instructional material. The state board may approve a request for a waiver upon a finding that the local superintendent has demonstrated accountability for student learning through alternative planning and that the participating teaching staff supports the implementation of a collaborative school improvement program. The local superintendent shall provide the state board with a program budget that shows the type and number of students served, the type and number of school employees involved and all expenditures of the waiver.

D. A teacher participating in the development and implementation of a collaborative school improvement program may contact the state board to comment on the local superintendent's waiver request if the teacher communicated his opinion in writing to the local superintendent at the time the local superintendent approved implementation of the program."

Section 27. A new section of the Public School Code, Section 22-5-16 NMSA 1978, is enacted to read:

"22-5-16. ADVISORY SCHOOL COUNCILS--CREATION--DUTIES.--

A. Each public school shall create an advisory "school council" to assist the school principal with school-based decision-making and to involve parents in their children's education.

B. A school council shall be created and its membership elected in accordance with local school board rule. School council membership shall reflect an equitable balance between school employees and parents and community members. At least one community member shall represent the business community, if such person is available. The school principal may serve as chairman. The school principal shall be an active member of the school council.

C. The school council shall:

(1) work with the school principal and give advice, consistent with state and school district rules and policies, on policies relating to instructional issues and curricula and on the public school's proposed and actual budgets;

(2) develop creative ways to involve parents in the schools;

(3) where appropriate, coordinate with any existing work force development boards or vocational education advisory councils to connect students and school academic programs to business resources and opportunities; and

(4) serve as the champion for students in building community support for schools and encouraging greater community participation in the public schools."

Section 28. Section 22-8-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 55) is amended to read:

"22-8-1. SHORT TITLE.--Chapter 22, Article 8 NMSA 1978 may be cited as the "Public School Finance Act"."

Section 29. 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. A budget for a school district shall not 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 22-10A-20 NMSA 1978.

B. The state board shall, by rule, establish the requirements for an instructional day, the standards for an instructional hour and the standards for a full-time teacher and for the equivalent thereof."

Section 30. Section 22-2-6.12 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 14, Section 2, as amended) is recompiled as Section 22-8-43 NMSA 1978 and is amended to read:

"22-8-43. PUBLIC SCHOOL READING PROFICIENCY FUND--CREATED.--The "public school reading proficiency fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants and donations. The fund shall be administered by the department, and money in the fund is appropriated to the department to distribute awards to public schools that implement innovative, scientifically based reading

programs. The department shall develop procedures and rules for the application and award of money from the fund, including criteria upon which to evaluate innovative, scientifically based reading programs. Schools receiving funds shall show evidence that they are using quality, scientifically based reading research to improve reading proficiency and shall develop individualized reading plans for students who fail to meet grade level reading proficiency standards. Disbursements of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the state superintendent. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert but shall remain to the credit of the fund."

Section 31. Section 22-10-4.1 NMSA 1978 (being Laws 1997, Chapter 238, Section 6) is recompiled as Section 22-8-44 NMSA 1978 and is amended to read:

"22-8-44. EDUCATOR LICENSURE FUND--DISTRIBUTION--
APPROPRIATION.--

A. The "educator licensure fund" is created in the state treasury and shall be administered by the department. The fund shall consist of money collected from application fees for licensure or for renewal of licensure by the state board.

B. Money in the fund is appropriated to the department to fund 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."

Section 32. Section 22-8B-4 NMSA 1978 (being Laws 1999, Chapter 281, Section 4, as amended) is amended to read:

"22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
OPERATION.--

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.

B. A charter school shall be administered and governed by a governing body in the manner set forth in the charter.

C. A charter school shall be responsible for its own operation, including preparation of a budget, contracting for services and personnel matters.

D. A charter school may negotiate or contract with a school district, a university or college or any third party for the use of a facility, its operation and

maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter.

E. In no event shall a charter school be required to pay rent for space that is deemed available, as negotiated by contract, in school district facilities; provided that the facilities can be made available at no cost to the district. All costs for the operation and maintenance of the facilities used by the charter school shall be subject to negotiation between the charter school and the district.

F. A charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.

G. A charter school may negotiate with a school district for capital expenditures.

H. A charter school shall be a nonsectarian, nonreligious and non-home-based public school that operates within a school district.

I. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

J. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act.

K. A charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the charter school shall revert to the local school board that authorized the charter.

L. A charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.

M. A charter school may contract and sue and be sued. A local school board that approves a charter school shall not be liable for any acts or omissions of the charter school.

N. A charter school shall comply with all state and federal health and safety requirements applicable to public schools."

Section 33. Section 22-10-1 NMSA 1978 (being Laws 1975, Chapter 306, Section 1, as amended) is recompiled as Section 22-10A-1 NMSA 1978 and is amended to read:

"22-10A-1. SHORT TITLE.--Chapter 22, Article 10A NMSA 1978 may be cited as the "School Personnel Act"."

Section 34. A new section of the Public School Code, Section 22-10A-3 NMSA 1978, is enacted to read:

"22-10A-3. LICENSE OR CERTIFICATE REQUIRED--APPLICATION FEE--GENERAL DUTIES.--

A. Except as otherwise provided in this subsection, any person teaching, supervising an instructional program or providing instructional support services in a public school or state agency; any person administering in a public school; and any person providing health care and administering medications or performing medical procedures in a public school shall hold a valid license or certificate from the department authorizing the person to perform that function. This subsection does not apply to a person performing the functions of a practice teacher as defined by the state board.

B. The state board shall charge a reasonable fee for each application for or the renewal of a license or certificate. The application fee may be waived if the applicant meets a standard of indigency established by the department.

C. A person performing the duties of a licensed school employee who does not hold a valid license or certificate or has not submitted a complete application for licensure or certification within the first three months from beginning employment duties shall not be compensated thereafter for services rendered until he demonstrates that he holds a valid license or certificate. This section does not apply to practice teachers as defined by rules of the state board.

D. Each licensed school employee shall:

(1) enforce all laws and rules applicable to his public school and school district or to the educational program of the state agency;

(2) if teaching, teach the prescribed courses of instruction;

(3) exercise supervision over students on property belonging to the public school or state agency and while the students are under the control of the public school or state agency; and

(4) furnish reports as required."

Section 35. A new section of the Public School Code, Section 22-10A-4 NMSA 1978, is enacted to read:

"22-10A-4. TEACHERS AND SCHOOL ADMINISTRATORS--PROFESSIONAL STATUS--LICENSURE LEVELS--SALARY ALIGNMENT.--

A. Teaching and school administration are recognized as professions, with all the rights, responsibilities and privileges accorded professions, having their first responsibility to the public they serve. The primary responsibilities of the teaching and school administration professions are to educate the children of this state and to improve the professional practices and ethical conduct of their members.

B. The New Mexico licensure framework for teachers and school administrators is a progressive career system in which licensees are required to demonstrate increased competencies and undertake increased duties as they progress through the licensure levels. The minimum salary provided as part of the career system shall not take effect until the state board has adopted increased competencies for the particular level of licensure and a highly objective uniform statewide standard of evaluation.

C. A level one license is a provisional license issued for the first three years of teaching that gives a beginning teacher the opportunity, through a formal mentorship program, for additional preparation to be a quality teacher. A level two license is given to a teacher who is a fully qualified professional who is primarily responsible for ensuring that students meet and exceed state board-adopted academic content and performance standards; a teacher may choose to remain at level two for the remainder of his career. A level three-A license is the highest level of teaching licensure for those teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention and mentoring. A level three-B license is for teachers who commence a new career path in school administration by becoming school administrators.

D. All teacher and school administrator salary systems shall be aligned with the licensure framework in a professional educator licensing and salary system.

E. All teachers and school administrators who hold teaching or administrator certificates on the effective date of this 2003 act shall meet the requirements for their level of licensure by September 1, 2006 and shall be issued licenses."

Section 36. Section 22-10-3.3 NMSA 1978 (being Laws 1997, Chapter 238, Section 1, as amended) is recompiled as Section 22-10A-5 NMSA 1978 and is amended to read:

"22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--REPORTING REQUIRED--LIMITED IMMUNITY--PENALTY FOR FAILURE TO REPORT.--

A. An applicant for initial licensure shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the licensure or employment decisions affecting the specific applicant. The applicant for initial licensure shall pay for the cost of obtaining the federal bureau of investigation record.

B. Local school boards and regional education cooperatives shall develop policies and procedures to require background checks on an applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school.

C. An applicant for employment who has been initially licensed within twenty-four months of applying for employment with a local school board, regional education cooperative or a charter school shall not be required to submit to another background check if the department has copies of his federal bureau of investigation records on file. An applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school shall provide two fingerprint cards or the equivalent electronic fingerprints to the local school board, regional education cooperative or charter school to obtain his federal bureau of investigation record. The applicant, contractor or contractor's employee who has been offered employment by a regional education cooperative or at a public school may be required to pay for the cost of obtaining a background check. At the request of a local school board, regional education cooperative or charter school, the department is authorized to release copies of federal bureau of investigation records that are on file with the department and that are not more than twenty-four months old. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment, contractor or contractor's employee with unsupervised access to students at a public school.

D. A local superintendent shall report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee.

E. The state board may suspend or revoke the license of a local superintendent who fails to report a criminal conviction involving moral turpitude of a licensed school employee.

F. A person who in good faith reports any known conviction of a felony or misdemeanor involving moral turpitude of a licensed 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 37. Section 22-2-8.7 NMSA 1978 (being Laws 1986, Chapter 33, Section 8, as amended by Laws 2001, Chapter 255, Section 1 and by Laws 2001, Chapter 261, Section 1) is recompiled as Section 22-10A-6 NMSA 1978 and is amended to read:

"22-10A-6. EDUCATIONAL REQUIREMENTS FOR LICENSURE.--

A. The state board shall require a person seeking licensure or reciprocity in elementary or secondary education to have completed the following minimum requirements in the college of arts and sciences:

- (1) twelve hours in English;
- (2) twelve hours in history, including American history and western civilization;
- (3) six hours in mathematics;
- (4) six hours in government, economics or sociology;
- (5) twelve hours in science, including biology, chemistry, physics, geology, zoology and botany; and
- (6) six hours in fine arts.

B. In addition to the requirements specified in Subsections A and C of this section, the state board shall require that a person seeking standard or alternative elementary licensure shall have completed six hours of reading courses, and a person seeking standard or alternative secondary licensure shall have completed three hours of reading courses in subject matter content. The state board shall establish requirements that provide a reasonable period of time to comply with the provisions of this subsection.

C. Except for licensure by reciprocity, the state board shall require, prior to initial licensure, no less than fourteen weeks of student teaching, a portion of which

shall occur in the first thirty credit hours taken in the college of education and shall be under the direct supervision of a teacher and a portion of which shall occur in the student's senior year with the student teacher being directly responsible for the classroom.

D. Nothing in this section shall preclude the state board from establishing or accepting equivalent requirements for purposes of reciprocal licensure or minimum requirements for alternative licensure.

E. Vocational teacher preparatory programs may be exempt from Subsections A through C of this section upon a determination by the state board that other licensure requirements are more appropriate for vocational teacher preparatory programs."

Section 38. A new section of the Public School Code, Section 22-10A-7 NMSA 1978, is enacted to read:

"22-10A-7. LEVEL ONE LICENSURE.--

A. A level one license is a provisional three-year license for beginning teachers that requires as a condition of licensure that the licensee undergo a formal mentorship program and an annual intensive performance evaluation by a school administrator for three full school years before applying for a level two license.

B. Each school district, in accordance with state board rules, shall provide for the mentorship and evaluation of level one teachers. At the end of each year and at the end of the license period, the level one teacher shall be evaluated for competency. If the teacher fails to demonstrate satisfactory progress and competence annually, the teacher may be terminated as provided in Section 22-10A-24 NMSA 1978. If the teacher has not demonstrated satisfactory progress and competence by the end of the three-year period, he shall not be granted a level two license.

C. Except in exigent circumstances defined by state board rule, a level one license shall not be extended beyond the initial period.

D. The department shall issue a standard level one license to an applicant who is at least eighteen years of age who:

(1) holds a baccalaureate degree from an accredited educational institution;

(2) has successfully completed a state board-approved teacher preparation program from a nationally accredited or state-approved educational institution;

(3) has passed the New Mexico teacher assessments examination;
and

(4) meets other qualifications for level one licensure, including clearance of the required background check.

E. The department shall issue an alternative level one license to an applicant who meets the requirements of Section 22-10A-8 NMSA 1978.

F. The state board shall establish competencies and qualifications for specific grade levels, types and subject areas of level one licensure, including early childhood, elementary, middle school, secondary, special education and vocational education.

G. Beginning with the 2003-2004 school year, with the adoption by the state board of a highly objective uniform statewide standard of evaluation for level one teachers, the minimum salary for a level one teacher shall be thirty thousand dollars (\$30,000) for a standard nine and one-half month contract.

H. Teachers who hold level one licenses on the effective date of this 2003 act must be evaluated by the end of the 2006-2007 school year."

Section 39. A new section of the Public School Code, Section 22-10A-8 NMSA 1978, is enacted to read:

"22-10A-8. ALTERNATIVE LEVEL ONE LICENSE.--

A. The department shall issue an alternative level one license to a person who is at least eighteen years of age and who has:

(1) completed a baccalaureate degree at an accredited institution of higher education, including completion of a minimum of thirty credit hours at either the undergraduate or graduate level in the subject area of instruction for which he is applying for a license;

(2) completed a master's degree at an accredited institution of higher education, including completion of a minimum of twelve graduate credit hours in the subject area of instruction for which he is applying for a license; or

(3) completed a doctoral or law degree at an accredited institution of higher education; and

(4) passed the New Mexico teacher assessments examination; and

(5) completed a minimum of twelve semester hours of instruction in teaching principles in a program approved by the department; or

(6) demonstrated to the department, in conjunction with the school district or state agency, that he has met the state board-approved competencies for level one teachers that correspond to the grade level that will be taught.

B. A degree referred to in Subsection A of this section shall correspond to the subject area of instruction and the particular grade level that will enable the applicant to teach in a competent manner as determined by the department.

C. An alternative level one teacher shall participate in the same mentorship, evaluation and other professional development requirements as other level one teachers.

D. A school district or state agency shall not discriminate against a teacher on the basis that he holds an alternative level one license."

Section 40. A new section of the Public School Code, Section 22-10A-9 NMSA 1978, is enacted to read:

"22-10A-9. TEACHER MENTORSHIP PROGRAM FOR LEVEL ONE TEACHERS--PURPOSE--STATE BOARD DUTIES--DEPARTMENT DUTIES.--

A. The purpose of the teacher mentorship program is to provide beginning teachers with an effective transition into the teaching field, to build on their initial preparation and to ensure their success in teaching; to improve the achievement of students; and to retain capable teachers in the classroom and to remove teachers who show little promise of success.

B. The department shall develop a framework for a teacher mentorship program for all level one teachers. The state board shall work with licensed school employees, representatives from teacher preparation programs and the commission on higher education to establish the framework.

C. The framework shall include:

(1) individual support and assistance for each beginning teacher from a designated mentor;

(2) structured training for mentors;

(3) an ongoing, formative evaluation that is used for the improvement of teaching practice;

(4) procedures for a summative evaluation of beginning teachers' performance during the first three years of teaching, including annual assessment of suitability for license renewal, and for final assessment of beginning teachers seeking level two licensure;

(5) support from local school boards, school administrators and other school district personnel; and

(6) regular review and evaluation of the teacher mentorship program.

D. The department shall:

(1) require submission and approval of each school district's teacher mentorship program;

(2) provide technical assistance to school districts that do not have a well-developed teacher mentorship program in place; and

(3) encourage school districts to collaborate with teacher preparation program administrators at institutions of higher education, career educators, educational organizations, regional service centers and other state and community leaders in the teacher mentorship program."

Section 41. A new section of the Public School Code, Section 22-10A-10 NMSA 1978, is enacted to read:

"22-10A-10. LEVEL TWO LICENSURE.--

A. A level two license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates essential competency to teach. If a level two teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall issue a level two license to an applicant who successfully completes the three-year level one license or is granted reciprocity as provided by state board rules; demonstrates essential competency required by the state board as verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications as required by the state board.

C. The department shall provide for qualifications for specific grade levels, types and subject areas of level two licensure, including early childhood, elementary, middle, secondary, special education and vocational education.

D. With the adoption by the state board of the statewide objective performance evaluation for level two teachers, the minimum salary for a level two teacher for a standard nine and one-half month contract shall be as follows:

(1) for the 2003-2004 school year, thirty thousand dollars (\$30,000);
(2) for the 2004-2005 school year, thirty-five thousand dollars
(\$35,000); and
(3) for the 2005-2006 school year, forty thousand dollars
(\$40,000)."

Section 42. A new section of the Public School Code, Section 22-10A-11 NMSA 1978, is enacted to read:

"22-10A-11. LEVEL THREE LICENSURE--TRACKS FOR TEACHERS AND SCHOOL ADMINISTRATORS.--

A. A level three-A license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates instructional leader competencies.

B. The department shall grant a level three-A license to an applicant who has been a level two teacher for at least three years and holds a post-baccalaureate degree or national board for professional teaching standards certification; demonstrates instructional leader competence as required by the state board and verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications for the license.

C. With the adoption by the state board of a highly objective uniform statewide standard of evaluation for level three-A teachers, the minimum salary for a level three-A teacher for a standard nine and one-half month contract shall be as follows:

(1) for the 2003-2004 school year, thirty thousand dollars (\$30,000);
(2) for the 2004-2005 school year, thirty-five thousand dollars
(\$35,000);
(3) for the 2005-2006 school year, forty thousand dollars (\$40,000);
(4) for the 2006-2007 school year, forty-five thousand dollars
(\$45,000); and
(5) for the 2007-2008 school year, fifty thousand dollars (\$50,000).

D. A level three-B license is a nine-year license granted to a school administrator who meets the qualifications for that level. Licenses may be renewed upon satisfactory annual demonstration of instructional leader and administrative competency.

E. The department shall grant a level three-B license to an applicant who has been a level three-A instructional leader for at least one year, has satisfactorily completed state board-approved courses in administration and a state board-approved administration apprenticeship program and demonstrates instructional leader competence required by the state board and verified by the local superintendent through the highly objective uniform statewide standard of evaluation.

F. Beginning with the 2005-2006 school year, the standard contract and minimum annual salary for a level three-B school principal shall be based on the size of the school in which the school principal is employed, as follows:

(1) for school principals of schools with two hundred or fewer students, a minimum salary of fifty-eight thousand dollars (\$58,000) for a standard ten-month contract;

(2) for school principals of schools with two hundred one to four hundred students, a minimum salary of sixty thousand dollars (\$60,000) for a standard ten-month contract;

(3) for school principals of schools with four hundred one to six hundred students, a minimum salary of sixty-two thousand dollars (\$62,000) for a standard ten-month contract;

(4) for school principals of schools with six hundred one to eight hundred students, a minimum salary of sixty-four thousand dollars (\$64,000) for a standard ten-month contract;

(5) for school principals of schools with eight hundred one to one thousand students, a minimum salary of sixty-six thousand dollars (\$66,000) for a standard ten-month contract; and

(6) for school principals of schools with more than one thousand students, a minimum salary of sixty-eight thousand dollars (\$68,000) for a standard ten-month contract."

Section 43. A new section of the Public School Code, Section 22-10A-12 NMSA 1978, is enacted to read:

"22-10A-12. LIMITED RECIPROCITY.--A teacher or school principal licensed in another state may be granted a level two or level three license if he has teaching experience, demonstrates the required competencies and meets other requirements and qualifications for the license for which he applies, including clearance of the required background check. The local superintendent may require a mentorship period for the licensee if he deems it necessary. A teacher who holds an out-of-state license may apply for a lower level license if he does not meet the requirements for the higher level."

Section 44. A new section of the Public School Code, Section 22-10A-13 NMSA 1978, is enacted to read:

"22-10A-13. NATIVE AMERICAN LANGUAGE AND CULTURE CERTIFICATES.--The state board may issue a Native American language and culture certificate to a person proficient in a Native American language and culture of a New Mexico tribe or pueblo who meets criteria established by the state board. A baccalaureate degree is not required for the person applying for this certificate. The Native American language and culture certificate shall be issued and renewable in accordance with procedures established by the state board."

Section 45. A new section of the Public School Code, Section 22-10A-14 NMSA 1978, is enacted to read:

"22-10A-14. CERTIFICATES OF WAIVER.--

A. If a local superintendent or governing authority of a state agency certifies to the department that an emergency exists in the hiring of a qualified person, the department may issue a certificate of teaching waiver or assignment waiver.

B. The department may issue a certificate of teaching waiver to a person who holds a baccalaureate degree but does not meet other requirements for licensure as a level one teacher. Certificates of teaching waivers are one-year waivers and may be renewed only if the holder provides satisfactory evidence of continued progress toward a level one license.

C. At the request of a local superintendent, the department may issue a certificate of assignment waiver to a licensed teacher who is assigned to teach outside his teaching endorsement area. A certificate of assignment waiver may be renewed each school year if the teacher provides satisfactory evidence of continued progress toward meeting the requirements for endorsement.

D. A teacher who holds a teaching or assignment waiver shall not be assigned to a school that has not made adequate yearly progress for two consecutive years."

Section 46. A new section of the Public School Code, Section 22-10A-15 NMSA 1978, is enacted to read:

"22-10A-15. SUBSTITUTE TEACHER CERTIFICATE.--The state board shall provide by rule for the qualifications for a substitute teacher certificate. A local school board may provide for additional qualifications or requirements as it deems necessary. Substitute teacher certificates shall be issued by the school district."

Section 47. A new section of the Public School Code, Section 22-10A-16 NMSA 1978, is enacted to read:

"22-10A-16. PARENTAL NOTIFICATION.--

A. Within sixty calendar days from the beginning of each school year, every school district shall issue a notice to parents that they may obtain information regarding the professional qualifications of their children's teachers, instructional support providers and school principals. At a minimum, the information shall include:

(1) whether the teacher has met state qualifications for licensure for the grade level and subjects being taught by the teacher;

(2) whether the teacher is teaching under a teaching or assignment waiver;

(3) the teacher's degree major and any other license or graduate degree held by the teacher; and

(4) the qualifications of any instructional support providers if the student is served by educational assistants or other instructional support providers.

B. A local superintendent shall give written notice to the parents of those students who are being taught for longer than four consecutive weeks by a substitute teacher or by a person who is not qualified to teach the grade or subject.

C. The local superintendent shall:

(1) ensure that the notice required by this section is provided by the end of the four-week period following the assignment of that person to the classroom;

(2) ensure that the notice required by this section is provided in a bilingual form to a parent whose primary language is not English;

(3) retain a copy of the notice required pursuant to this section; and

(4) ensure that information relating to teacher licensure is available to the public upon request."

Section 48. A new section of the Public School Code, Section 22-10A-17 NMSA 1978, is enacted to read:

"22-10A-17. INSTRUCTIONAL SUPPORT PROVIDER LICENSES.--

A. The department shall license instructional support providers, including educational assistants, librarians, school counselors, school social workers, school nurses, speech-language pathologists, psychologists, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, recreational therapists, interpreters for the deaf, diagnosticians and other service providers. The department may provide a professional licensing framework in which licensees can advance in their careers through the demonstration of increased competencies and the undertaking of increased duties.

B. The state board shall provide by rule for the requirements for licensure of types of instructional support providers. If an instructional support provider practices a licensed profession, he shall provide evidence satisfactory to the department that he holds a current, unsuspended license in the profession for which he is applying to provide instructional support services. The instructional support provider shall notify the school district and department immediately if his professional license is suspended, revoked or denied. Suspension, revocation or denial of a professional license shall be just cause for discharge or termination and suspension, revocation or denial of the instructional support provider license."

Section 49. A new section of the Public School Code, Section 22-10A-18 NMSA 1978, is enacted to read:

"22-10A-18. SCHOOL PRINCIPALS--DUTIES.--In addition to other duties prescribed by law, a school principal shall:

A. under the general supervision of the local superintendent, assume administrative responsibility and overall instructional leadership for the public school to which he is assigned, including the discipline of students and the planning, operation, supervision and evaluation of the educational program of the school;

B. recommend to the local superintendent the employment, promotion, transfer, discharge and termination of school employees in his school;

C. evaluate the performance of school employees and develop professional development plans or job improvement plans to assist school employees to improve;

D. take disciplinary action against school employees;

E. develop a proposed budget for the public school, with input from the school council, and submit it to the local superintendent; and

F. perform other duties assigned to him by the local superintendent to implement the policies of the local school board."

Section 50. A new section of the Public School Code, Section 22-10A-19 NMSA 1978, is enacted to read:

"22-10A-19. TEACHERS AND SCHOOL PRINCIPALS--ACCOUNTABILITY--EVALUATIONS--PROFESSIONAL DEVELOPMENT--PEER INTERVENTION--MENTORING.--

A. The state board shall adopt criteria and minimum highly objective uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees. The local superintendent shall adopt policies, guidelines and procedures for the performance evaluation process. Evaluation by other school employees shall be one component of the evaluation tool for school administrators.

B. As part of the highly objective uniform statewide standard of evaluation for teachers, the school principal shall observe each teacher's classroom practice to determine the teacher's ability to demonstrate state-adopted competencies.

C. At the beginning of each school year, teachers and school principals shall devise professional development plans for the coming year, and performance evaluations shall be based in part on how well the professional development plan was carried out.

D. If a level two or three-A teacher's performance evaluation indicates less than satisfactory performance and competency, the school principal may require the teacher to undergo peer intervention, including mentoring, for a period the school principal deems necessary. If the teacher is unable to demonstrate satisfactory performance and competency by the end of the period, the peer interveners may recommend termination of the teacher.

E. At least every two years, school principals shall attend a training program approved by the department to improve their evaluation, administrative and instructional leadership skills."

Section 51. Section 22-2-8.2 NMSA 1978 (being Laws 1986, Chapter 33, Section 3, as amended) is recompiled as Section 22-10A-20 NMSA 1978 and is amended to read:

"22-10A-20. STAFFING PATTERNS--CLASS LOAD--TEACHING LOAD.--

A. The individual class load for elementary school teachers shall not exceed twenty students for kindergarten; provided that any teacher in kindergarten with a class load of fifteen to twenty students shall be entitled to the assistance of an educational assistant.

B. The average class load for elementary school teachers at an individual school shall not exceed twenty-two students when averaged among grades one, two and three; provided that any teacher in grade one with a class load of twenty-one or more shall be entitled to the full-time assistance of an educational assistant.

C. The average class load for an elementary school teacher at an individual school shall not exceed twenty-four students when averaged among grades four, five and six.

D. The daily teaching load per teacher for grades seven through twelve shall not exceed one hundred sixty students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed one hundred thirty-five with a maximum of twenty-seven students per class and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed one hundred fifty students with a maximum of thirty students per class.

E. Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

F. Class load limits provided for in this section do not apply to band or music classes or athletic electives.

G. The state superintendent may waive the individual school class load requirements established in this section. Waivers shall be applied for annually and a waiver shall not be granted for more than two consecutive years. Waivers may only be granted if a school district demonstrates that:

(1) no portable classrooms are available;

(2) no other available sources of funding exist to meet its need for additional classrooms;

(3) the school district is planning alternatives to increase building capacity for implementation within one year; and

(4) the parents of all children affected by the waiver have been notified in writing:

(a) of the statutory class load requirements;

(b) that the school district has made a decision to deviate from these class load requirements; and

(c) of the school district plan to achieve compliance with the class load requirements.

H. If a waiver is granted pursuant to Subsection G of this section to an individual school, the average class load for elementary school teachers at that school shall not exceed twenty students in grade one and shall not exceed twenty-five students when averaged among grades two, three, four, five and six.

I. Each school district shall report to the department the size and composition of classes subsequent to the fortieth day and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's budget by the state superintendent.

J. The department shall report to the legislative education study committee by November 30 of each year regarding each school district's ability to meet class load requirements imposed by law.

K. Notwithstanding the provisions of Subsection G of this section, the state board may waive the individual class load and teaching load requirements established in this section upon a demonstration of a viable alternative curricular plan and a finding by the state board that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

L. Teachers shall not be required to perform noninstructional duties except in emergency situations as defined by the state board. For purposes of this subsection, "noninstructional duties" means noon hall duty, noon ground duty and noon cafeteria duty."

Section 52. Section 22-10-22 NMSA 1978 (being Laws 1967, Chapter 16, Section 124, as amended) is recompiled as Section 22-10A-31 NMSA 1978 and is amended to read:

"22-10A-31. DENIAL, SUSPENSION AND REVOCATION OF LICENSES.--In accordance with the procedures provided in the Uniform Licensing Act, the state board may deny, suspend or revoke a department-issued license for incompetency, moral turpitude or any other good and just cause.

Section 53. Section 22-10-3.2 NMSA 1978 (being Laws 1988, Chapter 48, Section 1, as amended) is recompiled as Section 22-10A-32 NMSA 1978 and is amended to read:

"22-10A-32. LICENSED SCHOOL EMPLOYEES--REQUIRED TRAINING PROGRAM.--

A. All licensed school employees shall be required to complete training in the detection and reporting of child abuse and neglect and substance abuse. This requirement shall be completed within the licensed school employee's first year of employment by a school district.

B. Pursuant to the policy and rules adopted by the state board, the department shall develop a training program, including training materials and necessary training staff, to meet the requirement of Subsection A of this section to make the training available in every school district. The department shall coordinate the development of the program with appropriate staff at the human services department and the department of health.

C. The training program developed pursuant to this section shall be made available by the department to the deans of every college of education in New Mexico for use in providing such training to students seeking elementary and secondary education licensure."

Section 54. Section 22-1-7 NMSA 1978 (being Laws 1989, Chapter 344, Section 2) is recompiled as Section 22-10A-33 NMSA 1978 and is amended to read:

"22-10A-33. VIOLENCE--VANDALISM--REPORTING.--

A. A school administrator, teacher or other school employee who observes or has direct knowledge from a participant or victim of an act of violence upon a school administrator, teacher or other school employee in the lawful discharge of his duties or vandalism to public school property shall file an incident report describing the incident pursuant to procedures established by the department.

B. A person who files an incident report pursuant to this section shall not be discriminated against in any manner or discharged by a local superintendent because he has filed that report.

C. The department shall establish uniform reporting procedures for incidents of violence or vandalism described in Subsection A of this section. The procedures shall include requirements for:

(1) incidents to be reported, incident description and report on action taken in response to the reported incident;

(2) annual incident reports by local superintendents of all reported incidents to local school boards;

(3) annual incident reports by local school boards of all reported incidents to the state superintendent; and

(4) annual incident reports by the state superintendent of all reported incidents to the state board. The annual incident report filed with that board shall be summarized and submitted to an appropriate interim committee of the legislature with recommendations to decrease the incidence of violence and vandalism in the public schools."

Section 55. Section 22-12-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 169) is amended to read:

"22-12-1. SHORT TITLE.--Chapter 22, Article 12 NMSA 1978 may be cited as the "Compulsory School Attendance Law"."

Section 56. Section 22-12-3 NMSA 1978 (being Laws 1971, Chapter 238, Section 1, as amended) is amended to read:

"22-12-3. RELIGIOUS INSTRUCTION EXCUSAL.--A student may, subject to the approval of the school principal, 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 school employees shall not assume responsibility for the religious instruction or permit it to be conducted on school property."

Section 57. Section 22-13-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 180, as amended) is repealed and a new Section 22-13-1 NMSA 1978 is enacted to read:

"22-13-1. SUBJECT AREAS--MINIMUM INSTRUCTIONAL AREAS REQUIRED--ACCREDITATION.--

A. The state board shall require public schools to address state board-approved academic content and performance standards when instructing in specific state board-required subject areas as provided in this section. A public school or school district failing to meet these minimum requirements shall not be accredited by the state board.

B. All first, second and third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension, and mathematics.

C. All first, second and third grade classes shall provide instruction in art, music and a language other than English.

D. In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

(1) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;

(2) mathematics;

(3) language other than English;

(4) communication skills;

(5) science;

(6) art;

(7) music;

(8) social studies;

(9) New Mexico history;

(10) United States history;

(11) geography; and

(12) physical fitness.

E. In fourth through eighth grades, school districts shall offer electives that contribute to academic growth and skill development and provide career and technical education."

Section 58. Section 22-2-8.4 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended by Laws 2001, Chapter 257, Section 1 and by Laws 2001, Chapter 276, Section 1) is recompiled as Section 22-13-1.1 NMSA 1978 and is amended to read:

"22-13-1.1. 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.

B. Successful completion of a minimum of twenty-three units aligned to the state academic content and performance standards 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, at least one of which is equivalent to the algebra 1 level or higher;

(3) two units in science, one of which shall have a laboratory component; provided, however, that with students entering the ninth grade beginning in the 2005-2006 school year, three units in science shall be required, 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 education or other physical activity;

(6) one unit in communication skills or business education, with a major emphasis on writing and speaking and that may include a language other than English; and

(7) nine elective units and eight elective units for students entering the ninth grade in the 2005-2006 school year that meet state board content and performance standards. Student service learning shall be offered as an elective.

C. Final examinations shall be administered to all students in all classes offered for credit.

D. A student shall not receive a high school diploma who has not passed a state graduation examination in the subject areas of reading, English, math, writing, science and social science. The state graduation examination 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 graduation 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 graduation 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."

Section 59. A new section of the Public School Code, Section 22-13-1.2 NMSA 1978, is enacted to read:

"22-13-1.2. HIGH SCHOOL CURRICULA AND END-OF-COURSE TESTS--ALIGNMENT.--High school curricula and end-of-course tests shall be aligned with the placement tests administered by two- and four-year public post-secondary educational institutions in New Mexico. The department shall collaborate with the commission on higher education in aligning high school curricula and end-of-course tests with the placement tests."

Section 60. Section 22-2-6.11 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 14, Section 1, as amended) is recompiled as Section 22-13-1.3 NMSA 1978 and is amended to read:

"22-13-1.3. READING INITIATIVE--DESIGN.--

A. The department shall design and implement a statewide reading initiative to improve reading proficiency in the state. The design of the reading initiative shall be based upon quality, scientifically based reading research that has been shown to improve reading proficiency and shall include the following:

- (1) consistent assessment and evaluation of student reading levels;
- (2) appropriate professional staff development to assist licensed school employees in the instruction of reading;
- (3) extra time in the student's day or year for implementation of reading programs;
- (4) rewards provided to teachers and other applicable licensed school employees in public schools that improve student reading proficiency; and
- (5) criteria for public schools to establish an individualized reading plan for students who fail to meet grade level reading proficiency standards.

B. The department shall use national experts to work with the department to develop an immediate reading initiative and a long-term plan for sustained reading improvement.

C. The department shall involve school district personnel, especially licensed elementary reading specialists, parents and other interested persons in the design of the reading initiative."

Section 61. Section 22-22-4 NMSA 1978 (being Laws 1972, Chapter 16, Section 4, as amended) is amended to read:

"22-22-4. VARIABLE SCHOOL CALENDAR.--The local school board may operate a public school or the school district under a variable school calendar. The state board shall develop criteria for the establishment of a variable school calendar in a school district. Those criteria shall include a requirement that the local school board demonstrate substantial community support for implementation of the variable school calendar."

Section 62. Section 22-22-5 NMSA 1978 (being Laws 1972, Chapter 16, Section 5, as amended by Laws 1993, Chapter 24, Section 2 and also by Laws 1993, Chapter 226, Section 49) is amended to read:

"22-22-5. VARIABLE SCHOOL CALENDAR--ACTION BY STATE BOARD.--

The state board may suspend or modify existing rules pertaining to school district operations upon recommendation of the state superintendent when those rules prevent or impede the implementation of the Variable School Calendar Act."

Section 63. Section 22-22-6 NMSA 1978 (being Laws 1972, Chapter 16, Section 6, as amended) is amended to read:

"22-22-6. VARIABLE SCHOOL CALENDAR--EFFECT The variable school calendar for a public school or school district shall be in lieu of any other school calendar provided by law, and all requirements for reporting or operating under existing school calendars shall be suspended for the public school or school district upon the initiation of operations under a variable school calendar. The public school or school district shall continue to operate under the approved variable school calendar until the local school board discontinues the variable school calendar."

Section 64. A new section of the Public School Code is enacted to read:

"SHORT TITLE.--Sections 64 through 68 of this act may be cited as the "Family and Youth Resource Act"."

Section 65. A new section of the Public School Code is enacted to read:

"ADVISORY COMMITTEE--MEMBERS--MEETINGS--DUTIES.--

A. The "family and youth resource advisory committee" is created. Members of the committee are:

- (1) the state superintendent or his designee;
- (2) the secretary of health or his designee;
- (3) the secretary of human services or his designee;
- (4) the secretary of children, youth and families or his designee;

and

- (5) the following members appointed by the state board:

- (a) one representative each from four different local community-based organizations, including faith-based providers, involved with the provision of health or social services to families; and

- (b) one local superintendent or his designee from a school district in which there are more than two schools eligible to participate in the family and youth resources program.

B. The members of the committee shall appoint the chairman and such other officers as they deem necessary.

C. The committee shall meet as frequently as it deems appropriate or necessary, but at least once a year. The chairman may call special meetings as he deems necessary and shall convene special meetings at the request of a majority of the members.

D. A majority of the committee constitutes a quorum.

E. Members who are not state officers may be reimbursed for per diem and mileage expenses as provided in the Per Diem and Mileage Act.

F. The department shall staff the committee.

G. The committee shall:

- (1) recommend to the department guidelines for the creation, implementation and operation of programs;

- (2) recommend to the department standards and criteria for awarding grants and the form and content of grant applications; and

- (3) review applications for grants and make recommendations to the department within ninety days of receipt of the grant applications."

Section 66. A new section of the Public School Code is enacted to read:

"PROGRAMS--PURPOSE--FUNCTIONS.--

A. A "family and youth resources program" may be created in any public school in the state. The department shall accept applications for grants from public schools in which eighty percent of the students are eligible for the free or reduced-fee lunch program to fund their program.

B. The purpose of the program is to provide an intermediary for students and their families at public schools to access social and health care services. The goal of the program is to forge mutual long-term relationships with public and private agencies and community-based, civic and corporate organizations to help students attain high academic achievement by meeting certain nonacademic needs of students and their families.

C. A program shall include the employment of a resource liaison, who shall:

(1) assess student and family needs and match those needs with appropriate public or private providers, including civic and corporate sponsors;

(2) make referrals to health care and social service providers;

(3) collaborate and coordinate with health and social service agencies and organizations through school-based and off-site delivery systems;

(4) recruit service providers and business, community and civic organizations to provide needed services and goods that are not otherwise available to a student or his family;

(5) establish partnerships between the school and community organizations such as civic, business and professional groups and organizations; and recreational, social and after-school programs such as boys' and girls' clubs and boy and girl scouts;

(6) identify and coordinate age-appropriate resources for students in need of:

(a) counseling, training and placement for employment;

(b) drug and alcohol abuse counseling;

(c) family crisis counseling; and

(d) mental health counseling;

(7) promote family support and parent education programs; and

(8) seek out other services or goods a student or his family needs to assist the student to stay in school and succeed."

Section 67. A new section of the Public School Code is enacted to read:

"FAMILY AND YOUTH RESOURCE PROGRAMS--GRANTS--DEPARTMENT DUTIES.--

A. Subject to the availability of funding, grants are available to a public school or group of public schools that meets department eligibility requirements.

B. Applications for grants shall be in the form prescribed by the department and shall include the following information:

(1) a statement of need, including demographic and socioeconomic information about the area to be served by the program;

(2) goals and expected outcomes of the program;

(3) services and activities to be provided by the program;

(4) written agreements for the provision of services by public and private agencies, community groups and other parties;

(5) a work plan and budget for the program, including staffing requirements and the expected availability of staff;

(6) hours of operation;

(7) strategies for dissemination of information about the program to potential users;

(8) training and professional development plans;

(9) plans to ensure that program participants are not stigmatized for their use of the program;

(10) a physical description of the place in the school or adjacent to the school in which the program will be located;

(11) letters of endorsement and commitment from community agencies and organizations and local governments; and

(12) any other information the department requires.

C. Grants shall not be awarded for applications submitted that supplant funding and other resources that have been used for purposes similar to the program."

Section 68. A new section of the Public School Code is enacted to read:

"FAMILY AND YOUTH RESOURCE FUND.--The "family and youth resource fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and earnings from investment of the fund. The fund shall not be transferred to any other fund at the end of a fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the purposes of the Family and Youth Resource Act. Money in the fund shall be disbursed on warrants issued by the secretary of finance and administration pursuant to vouchers signed by the state superintendent or his authorized representative."

Section 69. A new section of Chapter 2, Article 3 NMSA 1978 is enacted to read:

"DEPARTMENT OF FINANCE AND ADMINISTRATION--OFFICE OF EDUCATION ACCOUNTABILITY.--

A. The "office of education accountability" is created in the department of finance and administration. The office shall provide an independent evaluation of the Assessment and Accountability Act and the School Personnel Act by:

(1) monitoring the implementation of those acts;

(2) periodically reviewing school district and school-based decision-making policies relating to the recruitment and retention of school employees;

(3) verifying the accuracy of reports of public school, school district and state performance; and

(4) conducting studies of other states' efforts at assessment and accountability and other educational reforms and report its findings to the legislative education study committee and legislative finance committee.

B. The state department of public education, school districts and other agencies of the state or its political subdivisions shall cooperate with the office of education accountability and provide information as requested by the office."

Section 70. TEMPORARY PROVISION--DISTANCE LEARNING CAPABILITY.--The commission on higher education and the state department of public education shall inventory the current distance learning capability of public post-secondary educational institutions and prepare a statewide plan for the delivery by public post-secondary educational institutions of distance education courses for teachers and other licensed school employees in reading instruction for kindergarten through third grade and multilingual instruction in elementary and secondary schools. The inventory and plan, including funding recommendations, shall be submitted to the legislative education study committee by October 1, 2004.

Section 71. TEMPORARY PROVISIONS--BUDGET REQUIREMENTS.--

A. Prior to the approval of school district and charter school budgets for fiscal year 2004, the state superintendent shall verify that each local school board is providing a six percent salary increase for teachers and instructional support providers, except educational assistants, no later than the last pay period of December, 2003 and a two percent salary increase for all other school employees, including transportation employees, effective July 1, 2003, and a minimum salary of thirty thousand dollars (\$30,000) for teachers, effective July 1, 2003.

B. Prior to the approval of a school district or charter school's budget for fiscal year 2004, the state superintendent shall verify that an amount equal to or more than one percent of a school district's or charter school's approved fiscal year 2003 operating budget has been reallocated to direct instruction for expenditure in fiscal year 2004.

C. A total of nine million dollars (\$9,000,000) in school districts' and charter schools' unrestricted and unreserved cash balances and emergency reserve, as of June 30, 2003, shall be transferred to school districts' fiscal year 2004 budgets.

D. Prior to the approval of a school district's or charter school's budget for fiscal year 2004, the state superintendent shall verify that the school district's or charter school's ending cash balance does not exceed:

(1) nine percent if the current year program cost is less than five million dollars (\$5,000,000);

(2) seven and one-half percent if the current year program cost is five million dollars (\$5,000,000) but less than ten million dollars (\$10,000,000);

(3) six percent if the current year program cost is ten million dollars (\$10,000,000) but less than twenty-five million dollars (\$25,000,000);

(4) four and one-half percent if the current year program cost is twenty-five million dollars (\$25,000,000) but less than two hundred million dollars (\$200,000,000); and

(5) three and one-half percent if the current year program cost is two hundred million dollars (\$200,000,000) or more.

E. The limits provided for in Subsection D of this section shall be implemented if the amount of a school district's or charter school's credit does not exceed fifteen percent of its cash balance but is not less than seven dollars fifty cents (\$7.50) per MEM as reported on the fortieth day of the current year. For a school district or charter school that exceeds those limits, the state superintendent shall adjust its state equalization guarantee distribution accordingly.

F. In developing fiscal year 2004 operating budgets, school districts and charter schools shall not budget June 30, 2003 cash balances without the approval of both the superintendent of public instruction and the secretary of finance and administration.

G. A school district or charter school may request a waiver of the maximum cash balance requirements in Subsection D of this section from the superintendent of public instruction for a hardship that would impair the operation of the school district or charter school.

Section 72. RECOMPILATION.--

A. Section 22-1-8 NMSA 1978 (being Laws 1993, Chapter 166, Section 1) is recompiled as Section 22-21-2 NMSA 1978.

B. Sections 22-2-6.1 through 22-2-6.10 NMSA 1978 (being Laws 1986, Chapter 94, Sections 1 through 9 and Laws 1989, Chapter 373, Section 5, as amended) are recompiled as Sections 22-11A-1 through 22-11A-10 NMSA 1978.

C. Section 22-2-8.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 2, as amended) is recompiled as Section 22-13-2 NMSA 1978.

D. Section 22-2-19 NMSA 1978 (being Laws 2000, Chapter 107, Section 3, as amended) is recompiled as Section 22-13-3.2 NMSA 1978.

E. Sections 22-10-2, 22-10-10 and 22-10-23 through 22-10-27 NMSA 1978 (being Laws 1975, Chapter 306, Section 2, Laws 1967, Chapter 16, Section 112, Laws 1969, Chapter 116, Sections 1 and 3 through 5 and Laws 1994, Chapter 95,

Section 1, as amended) are recompiled as Sections 22-10A-2 and 22-10A-34 through 22-10A-39 NMSA 1978.

F. Sections 22-10-11 through 22-10-14.1, 22-10-16 through 22-10-18 and 22-10-21 NMSA 1978 (being Laws 1967, Chapter 16, Sections 113 through 116, Laws 1986, Chapter 33, Section 23, Laws 1967, Chapter 16, Sections 118 and 119, Laws 1986, Chapter 33, Section 25 and Laws 1967, Chapter 16, Sections 120 and 123, as amended) are recompiled as Sections 22-10A-21 through 22-10A-30 NMSA 1978.

G. Sections 22A-1-1 through 22A-1-5 NMSA 1978 (being Laws 1989, Chapter 113, Sections 1 through 5) are recompiled as Sections 22-13-3.3 through 22-13-3.7 NMSA 1978.

Section 73. REPEAL.--Sections 22-1-6, 22-2-7, 22-2-8.3, 22-2-8.5, 22-2-8.9, 22-2-8.10, 22-2-17, 22-2-18, 22-10-3, 22-10-3.1, 22-10-3.4 through 22-10-3.6, 22-10-4, 22-10-5 through 22-10-9 and 22-13A-1 through 22-13A-6 NMSA 1978 (being Laws 1989, Chapter 308, Section 1, Laws 1967, Chapter 16, Section 10, Laws 1986, Chapter 33, Sections 4 and 6, Laws 2001, Chapter 165, Section 1, Laws 2001, Chapter 287, Section 1, Laws 1993, Chapter 168, Sections 1 and 2, Laws 1975, Chapter 306, Section 3, Laws 1986, Chapter 33, Section 18, Laws 1997, Chapter 238, Section 2, Laws 1999, Chapter 249, Sections 1 and 2, Laws 1967, Chapter 16, Sections 107 and 108, Laws 1973, Chapter 135, Section 1, Laws 1967, Chapter 16, Sections 109 through 111 and Laws 1989, Chapter 137, Sections 1 through 6, as amended) are repealed.

Section 74. EMERGENCY.--It is necessary for the public

peace, health and safety that this act take effect immediately.

HOUSE BILL 212, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 4, 2003

WITH CERTIFICATE OF CORRECTION

CHAPTER 154

CHAPTER 154, LAWS 2003

AN ACT

FIXING THE TIME FOR A SPECIAL ELECTION FOR VOTING ON CONSTITUTIONAL AMENDMENTS RELATED TO THE PUBLIC SCHOOL SYSTEM PROPOSED BY THE FIRST SESSION OF THE FORTY-SIXTH LEGISLATURE; ALLOWING FOR CONCURRENT ELECTIONS; MAKING AN APPROPRIATION.

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

Section 1. SPECIAL ELECTION.--Amendments to the constitution of New Mexico related to the public school system that are proposed by the first session of the forty-sixth legislature, unless otherwise specified in the amendments, shall be submitted to a vote of the qualified electors at a special election to be held on the fourth Tuesday of September 2003.

Section 2. Section 3-8-9 NMSA 1978 (being Laws 1985, Chapter 208, Section 17, as amended) is amended to read:

"3-8-9. ELECTION SCHEDULING--CONFLICTS--NOTICE.--

A. Except as otherwise provided by law, a municipal election may be held concurrently with, but shall not be held within forty-two days prior to or within thirty days after, any statewide special, general or primary election or any regular school district election. Whenever a municipal election would be or has been scheduled within the prohibited time, the governing body shall adopt an election resolution scheduling or rescheduling the election on a date as soon as is practicable outside the prohibited period and in compliance with the requirements of the Municipal Election Code and any other statute specifically related to such election. If an election resolution has already been adopted, the new election resolution shall supersede the existing election resolution and the new election resolution shall be published as required by the Municipal Election Code.

B. Except as otherwise provided by law, one or more municipal special elections, including but not limited to bond elections, may be held in conjunction with a regular municipal election or one or more special municipal elections.

C. When concurrent elections are called for, publications, notices, selection of precinct boards, election schools, ordering election supplies, conduct of the election, canvassing, record keeping and all other election matters shall be conducted to comply with all election requirements for each such election as if it were held separately. However, any requirement may be satisfied by a combined action if such

action would satisfy the requirements set by law for each individual election. Allowable combined actions include but are not limited to, combined:

- (1) publications;
- (2) notices;
- (3) appointment of precinct boards;
- (4) ordering of election supplies;
- (5) conduct of election;
- (6) canvassing; and
- (7) record keeping."

Section 3. APPROPRIATION.--Nine hundred thousand dollars (\$900,000) is appropriated from the general fund to the secretary of state for expenditure in fiscal years 2003 and 2004 to pay the costs of the special election provided for provided for in Section 1 of this act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund.

HOUSE BILL 346, AS AMENDED

WITH CERTIFICATE AND CERTIFICATE

OF CORRECTIONS

CHAPTER 155

CHAPTER 155, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; LIMITING SCHOOL DISTRICT AND CHARTER SCHOOL OPERATIONAL CASH BALANCES; DECLARING AN EMERGENCY.

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

Section 1. Section 22-8-41 NMSA 1978 (being Laws 1967, Chapter 16, Section 99, as amended) is amended to read:

"22-8-41. RESTRICTION ON OPERATIONAL FUNDS--EMERGENCY ACCOUNTS--CASH BALANCES.--

A. A school district shall not expend money from its operational fund for the acquisition of a building site or for the construction of a new structure, unless the school district has bonded itself to practical capacity or the state superintendent determines and certifies to the legislative finance committee that the expending of money from the operational fund for this purpose is necessary for an adequate public educational program and will not unduly hamper the school district's current operations.

B. A school district or charter school may budget out of cash balances carried forward from the previous fiscal year an amount not to exceed five percent of its proposed operational fund expenditures for the ensuing fiscal year as an emergency account. Money in the emergency account shall be used only for unforeseen expenditures incurred after the annual budget was approved and shall not be expended without the prior written approval of the state superintendent.

C. In addition to the emergency account, school districts or charter schools may also budget operational fund cash balances carried forward from the previous fiscal year for operational expenditures, exclusive of salaries and payroll, upon specific prior approval of the state superintendent. The state superintendent shall notify the legislative finance committee in writing of his approval of such proposed expenditures. For fiscal years 2004 and 2005, with the approval of the state superintendent, a school district or charter school may budget so much of its operational cash balance as is needed for nonrecurring expenditures, including capital outlay.

D. Notwithstanding the provisions of Subsection C of this section, beginning with fiscal year 2006, prior to approval of a school district's or charter school's budget, the state superintendent shall verify that the reductions from the state equalization guarantee distribution have been taken pursuant to this section.

E. The allowable limit for a school district's or charter school's ending operational cash balance is:

(1) if the current year program cost is less than five million dollars (\$5,000,000), nine percent of the budgeted expenditures;

(2) if the current year program cost is five million dollars (\$5,000,000) but less than ten million dollars (\$10,000,000), seven and one-half percent of the budgeted expenditures;

(3) if the current year program cost is ten million dollars (\$10,000,000) but less than twenty-five million dollars (\$25,000,000), six percent of the budgeted expenditures;

(4) if the current year program cost is twenty-five million dollars (\$25,000,000) but less than two hundred million dollars (\$200,000,000), four and one-half percent of the budgeted expenditures; and

(5) if the current year program cost is two hundred million dollars (\$200,000,000) or more, for fiscal year 2004, two and one-half percent of the budgeted expenditures and, for subsequent fiscal years, three percent of the budgeted expenditures.

F. Except as otherwise provided in this section, for the 2006 and subsequent fiscal years, the state superintendent shall reduce the state equalization guarantee distribution, calculated pursuant to Section 22-8-25 NMSA 1978, to each school district or charter school by an amount equal to the school district's or charter school's excess cash balance. As used in this section, "excess cash balance" means the difference between a school district's or a charter school's actual operational cash balance and the allowable limit calculated pursuant to Subsection E of this section. Provided, however, that:

(1) for a school district or charter school with a current year program cost that exceeds two hundred million dollars (\$200,000,000), if the excess cash balance is greater than twenty percent of the allowable limit calculated pursuant to Subsection E of this section, then the reduction pursuant to this subsection shall equal twenty percent of the allowable limit; and

(2) for other school districts and charter schools, if the excess cash balance is greater than eighteen percent of the allowable limit, then the reduction pursuant to this subsection shall equal eighteen percent of the allowable limit.

G. In developing budgets, school districts and charter schools shall not budget current year cash balances without the approval of the state superintendent.

H. A school district or charter school whose enrollment growth exceeds one percent from the prior year and whose facility master plan includes the addition of a new school within two years may request from the state superintendent a waiver of up to fifty percent of the reduction otherwise required by Subsection F of this section.

I. Notwithstanding the provisions of Subsection F of this section, for fiscal year 2004, the reduction from the state equalization guarantee distribution shall be the greater of the amount calculated pursuant to that subsection or ten dollars (\$10.00) per MEM.

J. For the purposes of this section, "operational cash balance" means the allowable, unrestricted, unreserved operational cash balance and the emergency reserve.

K. For the purposes of this section, "allowable, unrestricted, unreserved operational cash balance and the emergency reserve" means the proportional share not attributable to revenue derived from the school district property tax, forest reserve funds and impact aid for which the state takes credit in determining a school district's or charter school's state equalization guarantee distribution."

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

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 745, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 4, 2003

CHAPTER 156

CHAPTER 156, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; CHANGING THE CALCULATION FOR DETERMINING ENROLLMENT GROWTH PROGRAM UNITS.

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

Section 1. Section 22-8-23.1 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 3, Section 7, as amended) is amended to read:

"22-8-23.1. ENROLLMENT GROWTH PROGRAM UNITS.--

A. A school district with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated as follows:

(Current Year MEM - Previous Year MEM)

X 100 = Percent Increase

Previous Year MEM

The number of additional program units shall be calculated as follows:

$(\text{Current Year MEM} - \text{Previous Year MEM}) - (\text{Current Year MEM} \times .01) \times 1.5 = \text{Units.}$

B. In addition to the units calculated in Subsection A of this section, a school district with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated in the following manner:

$(\text{Current Year MEM} - \text{Previous Year MEM})$

$\times 100 = \text{Percent Increase.}$

Previous Year MEM

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:

$(\text{Current Year MEM} - \text{Previous Year MEM}) \times .50 = \text{Units.}$

C. As used in this section:

(1) "current year MEM" means MEM on the fortieth day of the current year;

(2) "MEM" means the total school district membership, including early childhood education full-time equivalent membership and special education membership, but excluding full-day kindergarten membership for the first year that full-day kindergarten is implemented in a school pursuant to Subsection D of Section 22-2-19 NMSA 1978; and

(3) "previous year MEM" means MEM on the fortieth day of the previous year."

HOUSE BILL 169, AS AMENDED

CHAPTER 157

CHAPTER 157, LAWS 2003

AN ACT

CREATING A FUND FOR PROFESSIONAL DEVELOPMENT FOR PUBLIC SCHOOL TEACHERS.

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

Section 1. A new section of the Public School Code is enacted to read:

"TEACHER PROFESSIONAL DEVELOPMENT FUND.--

A. The "teacher professional development fund" is created in the state treasury to provide funding for professional development programs and projects for public school teachers. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department of education and money in the fund is appropriated to the department to carry out the purposes of the fund.

B. The department of education shall evaluate the success of each professional development program or project funded and report its findings to the legislative education study committee each year."

HOUSE APPROPRIATIONS AND FINANCE

COMMITTEE SUBSTITUTE FOR HOUSE BILL 159

CHAPTER 158

CHAPTER 158, LAWS 2003

AN ACT

RELATING TO PUBLIC FINANCE; CLARIFYING THAT THE STATE WILL NOT IMPAIR TEACHER HOUSING REVENUE BONDS; DECLARING AN EMERGENCY.

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

Section 1. Section 22-19A-7 NMSA 1978 (being Laws 2002, Chapter 22, Section 7) is amended to read:

"22-19A-7. BONDS--PLEDGE OF INCOME.--

A. Bonds shall be payable solely from any or all pledgeable revenue, and the local school board shall irrevocably pledge that revenue to the prompt payment of the principal, interest and service charges on the bonds. The bonds shall be equally and ratably secured, without priority, by this pledge of pledgeable revenue.

B. If the bonds are payable solely from the net income of the housing project being financed, the local school board shall operate the housing project so as to ensure a sufficient income to promptly pay the principal, interest and service charges as they become due on the bonds.

C. The state pledges and agrees with the holders of bonds issued by a local school board and payable from pledgeable revenue that the state will not limit or alter the rights of the local school board to receive, collect and account for pledgeable revenue and to fulfill the terms of any agreement made with the bondholders or in any way impair the rights and remedies of the bondholders until the bonds, together with the interest on the bonds, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of those bondholders, are fully paid and discharged."

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

HOUSE BILL 195

WITH EMERGENCY CLAUSE

SIGNED APRIL 4, 2003

CHAPTER 159

CHAPTER 159, LAWS 2003

N AN ACT

RELATING TO EDUCATION; REQUIRING NEXT-STEP PLANS FOR HIGH SCHOOL STUDENTS IN WHICH THE STUDENTS SET PERSONAL POST-HIGH- SCHOOL GOALS; REQUIRING A FINAL NEXT-STEP PLAN AS PREREQUISITE FOR GRADUATION.

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

Section 1. A new section of the Public School Code is enacted to read:

"NEXT-STEP PLANS REQUIRED--SCHOOL DISTRICTS, STATE BOARD AND STATE SUPERINTENDENT--ADDITIONAL DUTIES.--

A. As used in this section:

(1) "interim next-step plan" means an annual personal written plan, developed by a student, in consultation with the student's parent or guardian and school counselor or other school official charged with coursework planning for the student, in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and

(2) "final next-step plan" means a personal written plan, developed by a student, in consultation with the student's parent or guardian and school counselor or other school official charged with coursework planning for the student, that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job.

B. No student shall be promoted from the ninth, tenth or eleventh grade who has not developed and filed an updated interim next-step plan within sixty days prior to the end of each school year. The plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent or guardian and the student's guidance counselor or other school official charged with coursework planning for the student.

C. No student shall receive a high school diploma who has not completed and filed a final next-step plan prior to graduation. The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent or guardian and the student's guidance counselor or other school official charged with coursework planning for the student.

D. A local school board shall ensure that each high school student has the opportunity to develop the student's next-step plan and is reasonably informed about:

(1) curricular and course options;

(2) opportunities available that lead to different post-high-school options; and

(3) alternative opportunities available if the student does not finish a planned curriculum.

E. The state board shall:

(1) establish specific accountability standards for administrators, counselors, teachers and school district staff to ensure that every student has the opportunity to develop a next-step plan; and

(2) promulgate rules for accredited private schools in order to ensure substantial compliance with the provisions of this section.

F. The state superintendent shall:

(1) monitor compliance with the requirements of this section; and

(2) compile such information as is necessary to evaluate the success of next-step plans and report annually, by December 15, to the legislative education study committee and the governor."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this section is July 1, 2003.

HOUSE BILL 305, AS AMENDED

CHAPTER 160

CHAPTER 160, LAWS 2003

AN ACT

RELATING TO PUBLIC ASSISTANCE; REQUIRING THAT CERTAIN STATE FUNDS FOR HEAD START PROGRAMS BE USED TO CONTRACT AND SUBCONTRACT WITH PRIVATE AND NONPRIVATE PROGRAMS THAT MEET FEDERAL HEAD START PERFORMANCE STANDARDS.

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

Section 1. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES--USE OF STATE HEAD START PROGRAM FUNDS.--In the 2004 fiscal year and each subsequent fiscal year, at least twenty-five percent of the state's maintenance-of-effort funds appropriated for head start programs for children eligible pursuant to the federal temporary assistance for needy families program shall be used to contract or subcontract with private and nonprofit child care providers to

provide programs that meet federal head start performance standards.

HOUSE BILL 658, AS AMENDED

CHAPTER 161

CHAPTER 161, LAWS 2003

AN ACT

RELATING TO JUVENILES; AUTHORIZING PUBLIC SUPPORT FOR PUBLIC-PRIVATE PARTNERSHIPS TO DEVELOP AFTER-SCHOOL AND OTHER PREVENTION PROGRAMS FOR THE YOUTH OF NEW MEXICO.

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

Section 1. YOUTH PROGRAMS ESTABLISHED.--The children, youth and families department, the state department of public education, the department of health, the human services department and the labor department shall each contract for programs, subject to appropriations provided for that purpose, funded through a public-private partnership, for community-based after-school and other prevention programs and services for youth. Each department shall ensure, prior to contracting for services, that private matching funding is available and committed for the purpose of the contract.

HOUSE BILL 700, AS AMENDED

CHAPTER 162

CHAPTER 162, LAWS 2003

AN ACT

RELATING TO EDUCATION; PROVIDING FOR ACCESSIBLE ELECTRONIC FORMATS FOR INDIVIDUALS WITH DISABILITIES ENROLLED IN DISTANCE LEARNING AND USING COMPUTER-BASED COURSES.

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

Section 1. Section 21-2-5.1 NMSA 1978 (being Laws 1988, Chapter 164, Section 1, as amended) is amended to read:

"21-2-5.1. FUNDING FORMULA.--

A. The commission on higher education shall develop a funding formula that will provide funding for each institution of higher education to accomplish its mission as determined by a statewide plan.

B. The commission on higher education may include factors in the funding formula, which when implemented will achieve the following:

(1) improve the quality of programs central to each institution's mission;

(2) develop and enhance programs that meet targeted post-secondary educational needs and the related needs of public schools;

(3) eliminate unnecessary, unproductive or duplicative programs;

(4) consider faculty salaries and benefits adjustment to a competitive level with similar institutions in similar states, when such compensation adjustments are supported by detailed analyses of faculty workloads and educational outcomes assessments, and nonteaching staff salaries and benefits at a competitive level with other similar public or private sector employment in the community in which the institution is situated;

(5) recognize additional costs incurred through increases in enrollment;

(6) provide for equipment and equipment maintenance and library acquisitions and operations since the development of the prior funding formula;

(7) fund off-campus courses and other nontraditional course delivery systems at a level sufficient to allow their development;

(8) provide incentives to institutions to pursue private or alternative funding sources;

(9) encourage the sharing of expertise, equipment and facilities and development of joint instructional programs, research and public service projects;

(10) implement uniform articulation agreements and facilitation of transfer of students between institutions;

(11) encourage energy conservation;

(12) require mechanisms to track expenditures to ensure greater accountability; and

(13) require each institution of higher education that offers distance learning and computer-based courses of study to provide accompanying electronic formats that are usable by an individual with a disability using assistive technology, and those formats shall be based on the American standard code for information interchange, hypertext markup language and extensible markup language."

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

"DISTANCE LEARNING AND COMPUTER-BASED COURSES.--Public schools that offer distance learning and computer-based courses of study shall provide accompanying electronic formats that are usable by a person with a disability using assistive technology, and those formats shall be based on the American standard code for information interchange, hypertext markup language and extensible markup language."

HOUSE BILL 708, AS AMENDED

CHAPTER 163

CHAPTER 163, LAWS 2003

AN ACT

RELATING TO EDUCATION; BROADENING THE DEFINITION OF "INSTRUCTIONAL MATERIAL".

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

Section 1. Section 22-15-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 206, as amended) is amended to read:

"22-15-2. DEFINITIONS.--As used in the Instructional Material Law:

A. "division" or "bureau" means the instructional material bureau of the department of education;

B. "director" or "chief" means the chief of the bureau;

C. "instructional material" means school textbooks and other educational media, including on-line resources, distance learning media and productivity software;

D. "multiple list" means a written list of those instructional materials approved by the state board;

E. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of instructional material pursuant to the Instructional Material Law; and

F. "additional pupil" means a pupil in a school district's, state institution's or private school's current year's certified forty-day membership above the number certified in the school district's, state institution's or private school's prior year's forty-day membership."

HOUSE BILL 724

CHAPTER 164

CHAPTER 164, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; AUTHORIZING INTERGOVERNMENTAL AGREEMENTS FOR EXCHANGE OF MOTOR VEHICLE OFFENSE INFORMATION BETWEEN TRIBES AND THE STATE.

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

Section 1. Section 66-1-4.6 NMSA 1978 (being Laws 1990, Chapter 120, Section 7, as amended) is amended to read:

"66-1-4.6. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry;

B. "financial responsibility" means the ability to respond in damages for liability resulting from traffic accidents arising out of the ownership, maintenance or use of a motor vehicle of a type subject to registration under the laws of New Mexico, in amounts not less than specified in the Mandatory Financial Responsibility Act or having in effect a motor vehicle insurance policy. "Financial responsibility" includes a motor

vehicle insurance policy, a surety bond or evidence of a sufficient cash deposit with the state treasurer;

C. "first offender" means a person who for the first time under state or federal law or a municipal ordinance or a tribal law has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any other drug that renders the person incapable of safely driving a motor vehicle, regardless of whether the person's sentence was suspended or deferred;

D. "flammable liquid" means any liquid that has a flash point of seventy degrees fahrenheit or less, as determined by a tagliabue or equivalent closed-cup test device;

E. "foreign jurisdiction" means any jurisdiction other than a state of the United States or the District of Columbia;

F. "foreign vehicle" means every vehicle of a type required to be registered under the provisions of the Motor Vehicle Code brought into this state from another state, territory or country; and

G. "freight trailer" means any trailer, semitrailer or pole trailer drawn by a truck tractor or road tractor, and any trailer, semitrailer or pole trailer drawn by a truck that has a gross vehicle weight of more than twenty-six thousand pounds, but "freight trailer" does not include manufactured homes, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight."

Section 2. Section 66-1-4.16 NMSA 1978 (being Laws 1990, Chapter 120, Section 17, as amended) is amended to read:

"66-1-4.16. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they are cracked and broken;

B. "safety zone" means the area or space officially set apart within a highway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone;

C. "school bus" means any motor vehicle operating under the authority of the state board of education or private school or parochial school interests that is used to transport children, students or teachers to and from schools or to and from any school activity, but not including any vehicle:

(1) operated by a common carrier, subject to and meeting all requirements of the public regulation commission but not used exclusively for the transportation of pupils;

(2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the public regulation commission but is not used exclusively for the transportation of pupils; or

(3) operated as a per capita feeder as defined in Section 22-16-6 NMSA 1978;

D. "seal" means the official seal of the taxation and revenue department as designated by the secretary;

E. "secretary" means the secretary of taxation and revenue, and, except for the purposes of Sections 66-2-3

and 66-2-12 NMSA 1978, also includes the deputy secretary and any division director delegated by the secretary;

F. "semitrailer" means any vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some significant part of its weight and that of its load rests upon or is carried by another vehicle;

G. "sidewalk" means that portion of street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians;

H. "slow-moving vehicle" means any vehicle that is ordinarily moved, operated or driven at a speed less than twenty-five miles per hour;

I. "solid tire" means every tire of rubber or other resilient material that does not depend upon compressed air for the support of the load;

J. "special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including but not limited to farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers;

K. "specially-constructed vehicle" means every vehicle of a type required to be registered under the Motor Vehicle Code not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction;

L. "state" means any state, territory or possession of the United States, the District of Columbia or any province of the Dominion of Canada;

M. "state highway" means any public highway that has been designated as a state highway by the legislature, the state transportation commission or the secretary of highway and transportation;

N. "stop", when required, means complete cessation from movement;

O. "stop, stopping or standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal;

P. "street" or "highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

Q. "subsequent offender" means a person who was previously a first offender and who again, under state law, federal law or a municipal ordinance or a tribal law, has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug which rendered him incapable of safely driving a motor vehicle, regardless of whether the person's sentence was suspended or deferred; and

R. "suspension" means that a person's driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn."

Section 3. Section 66-1-4.17 NMSA 1978 (being Laws 1990, Chapter 120, Section 18, as amended) is amended to read:

"66-1-4.17. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "tank vehicle" means a motor vehicle that is designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis and that has either a gross vehicle weight rating of twenty-six thousand one or more pounds or is used in the transportation of hazardous materials requiring placarding of the vehicle under applicable law;

B. "taxicab" means a motor vehicle used for hire in the transportation of persons, having a normal seating capacity of not more than seven persons;

C. "through highway" means every highway or portion thereof at the entrance to which vehicular traffic from intersecting highways is required by law to stop

before entering or crossing it when stop signs are erected as provided in the Motor Vehicle Code;

D. "title service company" means a person, other than the department, an agent of the department, a licensed dealer or the motor transportation division of the department of public safety, who for consideration issues temporary registration plates or prepares and submits to the department on behalf of others applications for registration of or title to motor vehicles;

E. "traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together using any highway for purposes of travel;

F. "traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed;

G. "traffic safety bureau" means the traffic safety bureau of the state highway and transportation department;

H. "trailer" means any vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no significant part of its weight rests upon the towing vehicle;

I. "transporter of manufactured homes" means a commercial motor vehicle operation engaged in the business of transporting manufactured homes from the manufacturer's location to the first dealer's location. A "transporter of manufactured homes" may or may not be associated with or affiliated with a particular manufacturer or dealer;

J. "travel trailer" means a trailer with a camping body and includes recreational travel trailers and camping trailers;

K. "trial court" means the magistrate, municipal or district court that tries the case concerning an alleged violation of a provision of the Motor Vehicle Code;

L. "tribal court" means a court created by a tribe or a court of Indian offense created by the United States secretary of the interior;

M. "tribe" means an Indian nation, tribe or pueblo located wholly or partially in New Mexico;

N. "truck" means every motor vehicle designed, used or maintained primarily for the transportation of property;

O. "truck camper" means a camping body designed to be loaded onto, or affixed to, the bed or chassis of a truck. A camping body, when combined with a truck or truck cab and chassis, even though not attached permanently, becomes a part of the

motor vehicle, and together they are a recreational unit to be known as a "truck camper"; there are three general types of truck campers:

(1) "slide-in camper" means a camping body designed to be loaded onto and unloaded from the bed of a pickup truck;

(2) "chassis-mount camper" means a camping body designed to be affixed to a truck cab and chassis; and

(3) "pickup cover" or "camper shell" means a camping body designed to provide an all-weather protective enclosure over the bed of a pickup truck and to be affixed thereto; and

P. "truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn."

Section 4. A new section of the Motor Vehicle Code, Section 66-5-1.2 NMSA 1978, is enacted to read:

"66-5-1.2. DEFINITION--TRIBE.--As used in

Sections 66-5-25, 66-5-26, 66-5-30 and 66-8-102 NMSA 1978, "tribe" means an Indian nation, tribe or pueblo that is located wholly or partially in New Mexico and that has executed an intergovernmental agreement with the state pursuant to Section 66-5-27.1 NMSA 1978."

Section 5. Section 66-5-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 245, as amended) is amended to read:

"66-5-23. RECORDS TO BE KEPT BY THE DIVISION.--

A. The division shall file every application for a driver's license or a commercial driver's license pursuant to the provisions of the New Mexico Commercial Driver's License Act received by it and shall maintain suitable indexes containing:

(1) all applications denied and, on each, note the reasons for denial;

(2) all applications granted;

(3) the name of every licensee whose license has been suspended or revoked by the division and, after each, note the reasons for the action; and

(4) the name of every licensee who has violated his written promise to appear in court.

B. The division shall also file all abstracts of court records of conviction or reports that it receives from the trial courts of this state or from a tribal court, which show either that a driver is a first offender or a subsequent offender and whether that offender was represented by counsel or waived the right to counsel, with attention to Article III of the Driver License Compact, and in connection therewith maintain convenient records or make suitable notations in order that the individual record of each licensee showing the convictions of the licensee in which he has been involved shall be readily ascertainable and available for the consideration of the division upon any application for renewal of license and at other suitable times."

Section 6. Section 66-5-25 NMSA 1978 (being Laws 1978, Chapter 35, Section 247, as amended) is amended to read:

"66-5-25. SUSPENDING PRIVILEGES OF NONRESIDENTS--REPORTING CONVICTIONS--FAILURES TO APPEAR--FAILURES TO PAY.--

A. The privilege of driving a motor vehicle on the highways of this state given to a nonresident shall be subject to suspension or revocation by the division in like manner and for like cause as a driver's license may be suspended or revoked.

B. The division is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, or of notice of failure to appear or upon determination by the division of failure to pay a penalty assessment, to forward the record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

C. Upon a request by a tribe, the division is authorized to forward to a tribal court or other authority, as specified in an applicable intergovernmental agreement, the record of the conviction in this state of a resident driver of a motor vehicle, who is subject to the jurisdiction of the tribe, of any offense under the Motor Vehicle Code or of notice of failure to appear or upon determination by the division of a failure to pay a penalty assessment."

Section 7. Section 66-5-26 NMSA 1978 (being Laws 1978, Chapter 35, Section 248, as amended) is amended to read:

"66-5-26. SUSPENDING RESIDENT'S LICENSE--CONVICTION FAILURE TO APPEAR, FAILURE TO PAY IN ANOTHER STATE OR TRIBAL JURISDICTION.--

A. The division is authorized to suspend or revoke the license of a resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon

receiving notice of the conviction of such person in another state or by a tribe of an offense that if committed within the jurisdiction of this state, would be grounds for the suspension or revocation of the license of a driver.

B. In addition, the division is authorized to suspend the license of a resident of this state, or the privilege of a nonresident to drive a motor vehicle in this state, upon receiving notice of failure to appear or pay a penalty assessment imposed by a tribe or imposed in another state that is a signatory of the Nonresident Violator Compact with New Mexico."

Section 8. A new section of the Motor Vehicle Code, Section 66-5-27.1 NMSA 1978, is enacted to read:

"66-5-27.1. RECOGNITION OF CONVICTIONS FOR MOTOR VEHICLE OFFENSES COMMITTED ON TRIBAL LAND--INTERGOVERNMENTAL AGREEMENTS--INFORMATION SHARING WITH TRIBAL COURTS.--

A. The department is authorized to enter into an intergovernmental agreement with the appropriate governmental entity of a tribe to permit the exchange of information between the tribal court and the division regarding persons who are adjudicated for a motor vehicle offense that occurred within the jurisdiction of the tribal court.

B. The division is authorized to suspend or revoke the driver's license or driving privilege of a person who has been convicted of a motor vehicle offense by a tribal court; provided that:

(1) the department has entered into an intergovernmental agreement with the tribe that permits the exchange of information on motor vehicle offense convictions between the tribal court and the division; and

(2) the division has received notice from the tribal court, or other authority as provided in the intergovernmental agreement, that the driver has been convicted of a motor vehicle offense that, if committed within the jurisdiction of the state, would be grounds for suspension or revocation of the driver's license or driving privilege of the offender."

Section 9. Section 66-5-30 NMSA 1978 (being Laws 1978, Chapter 35, Section 252, as amended) is amended to read:

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

A. The division is authorized to suspend the instruction permit, driver's license or provisional license of a driver without preliminary hearing upon a showing by its records or other sufficient evidence, including information provided to the state

pursuant to an intergovernmental agreement authorized by Section 66-5-27.1 NMSA 1978, that the licensee:

- (1) has been convicted of an offense for which mandatory revocation of license is required upon conviction;
- (2) has been convicted as a driver in an accident resulting in the death or personal injury of another or serious property damage;
- (3) has been convicted with such frequency of offenses against traffic laws or rules governing motor vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;
- (4) is an habitually reckless or negligent driver of a motor vehicle;
- (5) is incompetent to drive a motor vehicle;
- (6) has permitted an unlawful or fraudulent use of the license;
- (7) has been convicted of an offense in another state or tribal jurisdiction that if committed within this state's jurisdiction would be grounds for suspension or revocation of the license;
- (8) has violated provisions stipulated by a district court in limitation of certain driving privileges;
- (9) has failed to fulfill a signed promise to appear or notice to appear in court as evidenced by notice from a state court or tribal court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code or pursuant to the laws of the tribe;
- (10) has failed to pay a penalty assessment within thirty days of the date of issuance by the state or a tribe; or
- (11) has accumulated seven points, but less than eleven points, and when the division has received a recommendation from a municipal or magistrate judge that the license be suspended for a period not to exceed three months.

B. Upon suspending the license of a person as authorized in this section, the division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within not to exceed twenty days, not counting Saturdays, Sundays and legal holidays, after receipt of the request in the county wherein the licensee resides unless the division and the licensee agree that the hearing may be held in some other county; provided that the hearing request is received within twenty days from the date that the suspension was deposited in the United States mail. The director may, in his discretion, extend the twenty-day

period. Upon the hearing, the director or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon the hearing, the division shall either rescind its order of suspension or, good cause appearing therefor, may continue, modify or extend the suspension of the license or revoke the license."

Section 10. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to drive a 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 a 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. A person under first conviction pursuant to 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 pursuant to 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 bureau 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 pursuant to 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 pursuant to 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 pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to 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, an 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 pursuant to 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 pursuant to 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 requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

I. Upon a first conviction for aggravated driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection D of this section, as a condition of probation, an offender shall be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

J. Upon a first conviction for driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection A, B or C of this section, as a condition of probation, an offender may be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

K. Upon any subsequent conviction pursuant to this section, as a condition of probation, a subsequent offender shall be required to have an ignition interlock device installed and operating for a period of at least one year on all motor vehicles driven by the subsequent offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the subsequent offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If a subsequent offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the subsequent offender may be in violation of the terms and conditions of his probation.

L. 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.

M. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States or of a tribe, where that ordinance or law is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

N. In addition to any other fine or fee that 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.

O. 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 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE FLOOR SUBSTITUTE FOR

HOUSE BILL 278

CHAPTER 165

CHAPTER 165, LAWS 2003

AN ACT

RELATING TO WATER; REQUIRING THAT A MEMBER OF A NEW MEXICO INDIAN TRIBE OR PUEBLO COMMISSIONER BE APPOINTED TO THE INTERSTATE STREAM COMMISSION AND THE WATER QUALITY CONTROL COMMISSION; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 72-14-1 NMSA 1978 (being Laws 1935, Chapter 25, Section 1, as amended) is amended to read:

"72-14-1. INTERSTATE STREAM COMMISSION--CREATION--MEMBERSHIP--ORGANIZATION.--There is created the "interstate stream commission" consisting of nine members, eight appointed by the governor for a term of six years and the ninth member to be the state engineer. The members appointed by the governor shall be representative of major irrigation districts or sections, and no two members shall be appointed from the same irrigation district or section. The governor shall appoint at least one member of a New Mexico Indian tribe or pueblo to the commission. The commission shall elect a chairman, and the state engineer shall be the secretary."

Section 2. Section 74-6-3 NMSA 1978 (being Laws 1967, Chapter 190, Section 3, as amended by Laws 2001, Chapter 246, Section 14 and by Laws 2001, Chapter 267, Section 1) 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 parks 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 geology and mineral resources at the New Mexico institute of mining and technology or a member of his staff designated by him;

(9) a municipal or county government representative; and

(10) 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. At least one member appointed by the governor shall be a member of a New Mexico Indian tribe or pueblo.

B. A member of the commission shall not receive, or shall not have received during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. A member of the commission 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. A member of the commission shall not participate in the consideration of an appeal if the subject of the appeal is an application filed or a permit held by an entity that either employs the commission member or from which the commission member received more than ten percent of his gross personal income in either of the preceding two years.

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."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

CHAPTER 166

CHAPTER 166, LAWS 2003

AN ACT

RELATING TO FEDERAL MILITARY BASES; ESTABLISHING THE OFFICE OF MILITARY BASE PLANNING AND SUPPORT; ESTABLISHING THE MILITARY BASE PLANNING COMMISSION; PROVIDING FOR EFFORTS TO ENSURE THE LONG-TERM VIABILITY OF THE STATE'S MILITARY BASES; ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. OFFICE OF MILITARY BASE PLANNING AND SUPPORT CREATED--DUTIES.--

A. The "office of military base planning and support" is created, which is administratively attached to the economic development department. The department shall provide administrative services to the office.

B. The secretary of economic development shall appoint a director of the office of military base planning and support.

C. The director of the office of military base planning and support shall:

(1) employ, under the authorization of the secretary of economic development, the staff necessary to carry out the work of the office of military base planning and support and the military base planning commission;

(2) support the commission;

(3) inform the governor and the secretary of economic development about issues impacting the military bases in the state, including infrastructure requirements, environmental needs, military force structure possibilities, tax implications, property considerations and issues requiring coordination and support from other state agencies;

(4) serve as a liaison with the community organizations whose purpose is to support the long-term viability of the military bases;

(5) communicate with the staff of the state's congressional delegation; and

(6) identify issues, prepare information and provide for presentations necessary for the commission to carry out its duties.

Section 2. MILITARY BASE PLANNING COMMISSION CREATED-- COMPOSITION.--

A. The "military base planning commission" is created, which is administratively attached to the economic development department. The department shall provide administrative services to the commission.

B. The military base planning commission consists of fifteen members, thirteen of which are appointed by the governor with the advice and consent of the senate. The commission shall include the lieutenant governor, the secretary of economic development and appropriate representatives from the counties, or adjoining counties, in which military bases are located.

C. The governor shall appoint a chair from among the members of the commission. The commission shall meet at the call of the chair and shall meet not less than quarterly. Members of the commission shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act.

Section 3. DUTIES.--The military base planning commission shall:

A. obtain and evaluate information about the federal government's considerations, plans, policies and initiatives relating to military base realignment and closure;

B. obtain and evaluate information relating to the impact of federal military base realignment and closure plans on the state's economy and the military base area's local economy;

C. work with and provide assistance to established community organizations that have as their purpose the support of the long-term viability of the military bases in their local area;

D. ensure collaboration among the community organizations described in Subsection C of this section and an understanding of the joint efforts between the military bases in the state;

E. work with and provide assistance to the state's congressional delegation on matters relating to federal base realignment and closure plans; and

F. advise the governor on measures necessary to ensure the continued presence of military bases in the state.

Section 4. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The office of military base planning and support and the military base planning commission are terminated on

July 1, 2005 pursuant to the provisions of the Sunset Act. The office and the commission shall continue to operate according to the provisions of this act until July 1, 2006. Effective July 1, 2006, this act is repealed.

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 287, AS AMENDED

CHAPTER 167

CHAPTER 167, LAWS 2003

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE CONSUMER NO-CALL ACT; REGULATING TELEPHONE SOLICITATION ACTIVITIES; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Consumer No-Call Act".

Section 2. DEFINITIONS.--As used in the Consumer No-Call Act:

A. "caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls;

B. "established business relationship" means a relationship that:

(1) was formed, prior to a telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement or commercial transaction between the parties regarding products or services offered by the seller or telephone solicitor; and

(2) currently exists or has existed within the immediately preceding twelve months;

C. "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the public regulation commission, where local exchange rates apply;

D. "local exchange company" means a telecommunications company that provides the transmission of two-way interactive switched voice communications within a local exchange area;

E. "public telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means originating and terminating in this state regardless of actual call routing, but "public telecommunications service" does not include the provision of terminal equipment used to originate or terminate the service; private telecommunications service; broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission; radio common carrier services, including mobile telephone service and radio paging; or one-way cable television service;

F. "residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person;

G. "telecommunications company" means a person that provides public telecommunications service; and

H. "telephone solicitation" means a voice or telefacsimile communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services and includes a communication described in this subsection through the use of automatic dialing and recorded message equipment or by other means, but "telephone solicitation" does not include a communication:

(1) to a residential subscriber with that subscriber's prior express invitation or permission;

(2) by or on behalf of a person with whom a residential subscriber has an established business relationship;

(3) made for the sole purpose of urging support for or opposition to a political candidate or ballot issue;

(4) made for the sole purpose of conducting political polls or soliciting the expression of opinions, ideas or votes; or

(5) by a person who is a duly licensed real estate broker pursuant to Section 61-29-11 NMSA 1978, who is a resident of the state and whose telephone call to the consumer is for the sole purpose of selling, exchanging, purchasing, renting, listing for sale or rent or leasing real estate in accordance with the provisions for which he or she is licensed and not in conjunction with any other offer.

Section 3. DO-NOT-CALL REGISTRY--FEDERAL TRADE COMMISSION REGISTRY ADOPTED AS STATE REGISTRY.--The national "do-not-call" registry established and maintained by the federal trade commission pursuant to 16 CFR Section 310.4(b)(1)(iii)(B) is adopted and shall serve as the New Mexico do-not-call registry for the purposes of the Consumer No-Call Act.

Section 4. PROHIBITED ACT--CIVIL ACTION--CRIMINAL PENALTY.-

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A. A person engaging in telephone solicitation shall not initiate an outbound telephone call consisting of telephone solicitation to a residential subscriber in New Mexico when that residential subscriber's telephone number has been on the national do-not-call registry, established by the federal trade commission, for at least three months prior to the date the call is made.

B. A residential subscriber may bring a civil action against a person who violates the provisions of Subsection A of this section in respect to that subscriber. A residential subscriber who succeeds in obtaining a judgment of violation shall be awarded liquidated damages in the amount of five hundred dollars (\$500) for each violation proved. Each call is a separate violation of the provisions of this section. A residential subscriber that succeeds in obtaining a judgment of violation shall be awarded reasonable attorney fees and costs by the court.

C. Violation of the provisions of Subsection A of this section is a misdemeanor, and the violator shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

Section 5. ATTORNEY GENERAL TO PROMULGATE RULES TO IMPLEMENT TELEPHONE SOLICITATION RESTRICTIONS.--No later than January 1, 2004, the attorney general shall promulgate rules that specify:

A. the methods by which a residential subscriber may give notice to the attorney general of his objection to receiving telephone solicitations or revocation of a notice previously given;

B. the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on the notice;

C. the methods by which objections and revocations shall be collected and added to the New Mexico do-not-call registry;

D. the methods by which a person desiring to engage in telephone solicitation may obtain access to the New Mexico do-not-call registry to avoid calling the telephone numbers of residential subscribers in New Mexico; and

E. methods for keeping the New Mexico do-not-call registry current and other matters relating to the registry that the attorney general deems desirable.

Section 6. RESTRICTIONS ON USE OF REGISTRY.--Information contained in the registry established pursuant to the Consumer No-Call Act shall be used only for the purpose of compliance with that act. The information is confidential and is not subject to public inspection or disclosure.

Section 7. BLOCKING PROHIBITED.--A person engaging in telephone solicitation shall not use a method to block or otherwise circumvent a residential subscriber's use of a caller identification service.

Section 8. Section 57-12-1 NMSA 1978 (being Laws 1967, Chapter 268, Section 1) is amended to read:

"57-12-1. SHORT TITLE.--Chapter 57, Article 12 NMSA 1978 may be cited as the "Unfair Practices Act"."

Section 9. Section 57-12-2 NMSA 1978 (being Laws 1967, Chapter 268, Section 2, as amended) is amended to read:

"57-12-2. DEFINITIONS.--As used in the Unfair Practices Act:

A. "person" means, where applicable, natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates;

B. "seller-initiated telephone sale" means a sale, lease or rental of goods or services in which the seller or his representative solicits the sale by telephoning the prospective purchaser and in which the sale is consummated entirely by telephone or mail, but does not include a transaction:

(1) in which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or

(2) in which the purchaser is accorded the right of rescission by the provisions of the federal Consumer Credit Protection Act, 15 U.S.C. 1635 or regulations issued pursuant thereto;

C. "trade" or "commerce" includes the advertising, offering for sale or distribution of any services and any property and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of this state;

D. "unfair or deceptive trade practice" means an act specifically declared unlawful pursuant to the Unfair Practices Act, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead any person and includes:

(1) representing goods or services as those of another when the goods or services are not the goods or services of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(6) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

(8) disparaging the goods, services or business of another by false or misleading representations;

(9) offering goods or services with intent not to supply them in the quantity requested by the prospective buyer to the extent of the stock available, unless the purchaser is purchasing for resale;

(10) offering goods or services with intent not to supply reasonable expectable public demand;

(11) making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of or amounts of price reduction;

(12) making false or misleading statements of fact for the purpose of obtaining appointments for the demonstration, exhibition or other sales presentation of goods or services;

(13) packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

(15) stating that a transaction involves rights, remedies or obligations that it does not involve;

(16) stating that services, replacements or repairs are needed if they are not needed; or

(17) failure to deliver the quality or quantity of goods or services contracted for; and

E. "unconscionable trade practice" means an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts which to a person's detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid."

Section 10. Section 57-12-22 NMSA 1978 (being Laws 1989, Chapter 309, Section 2) is amended to read:

"57-12-22. TELEPHONE SOLICITATION SALES--AUTOMATED TELEPHONE DIALING SYSTEMS FOR SALES RESTRICTED--DISCLOSURE AND OTHER REQUIREMENTS ESTABLISHED FOR AUTHORIZED TELEPHONE SOLICITATION SALES--PROHIBITED TELEPHONE SOLICITATION.--

A. A person shall not utilize an automated telephone dialing or push-button or tone-activated address signaling system with a prerecorded message to solicit persons to purchase goods or services unless there is an established business relationship between the persons and the person being called consents to hear the prerecorded message.

B. It is unlawful under the Unfair Practices Act for a person to make a telephone solicitation for a purchase of goods or services:

(1) without disclosing within fifteen seconds of the time the person being called answers the name of the sponsor and the primary purpose of the contact;

(2) that misrepresents the primary purpose of a telephone solicitation of a residential subscriber as a "courtesy call", a "public service information call" or some other euphemism;

(3) under the guise of research or a survey when the real intent is to sell goods or services;

(4) without disclosing, prior to commitments by customers, the cost of the goods or services, all terms, conditions, payment plans and the amount or existence of any extra charges such as shipping and handling;

(5) that are received before 9:00 a.m. or after 9:00 p.m.;

(6) using automatic dialing equipment unless the telephone immediately releases the line when the called party disconnects;

(7) using automatic dialing equipment that dials and engages the telephone numbers of more than one person at a time but allows the possibility of a called person not being connected to the calling person for some period not exceeding that established by the federal trade commission at 16 C.F.R. Sections 310(b)(1)(iv) and 310.4(b)(4); and

(8) in which credit card numbers are requested before the prospective purchaser expresses a desire to use a credit card to pay for the purchase.

C. It is unlawful for a person to:

(1) make a telephone solicitation of a residential subscriber whose telephone number has been on the national do-not-call registry, established by the federal trade commission, for at least three months prior to the date the call is made; or

(2) use a method to block or otherwise intentionally circumvent a residential subscriber's use of a caller identification service pursuant to the Consumer No-Call Act.

D. As used in this section:

(1) "established business relationship" means a relationship that:

(a) was formed, prior to a telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement or commercial transaction between the parties regarding products or services offered by the seller or telephone solicitor; and

(b) currently exists or has existed within the immediately preceding twelve months;

(2) "local exchange company" means a telecommunications company that provides the transmission of two-way interactive switched voice communications within a local exchange area;

(3) "residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person; and

(4) "telephone solicitation" means a voice or telefacsimile communication over a telephone line for the purpose of encouraging the purchase or rental of or investment in property, goods or services and includes a communication described in this subsection through the use of automatic dialing and recorded message equipment or by other means, but "telephone solicitation" does not include a communication:

(a) to a residential subscriber with that subscriber's prior express invitation or permission;

(b) by or on behalf of a person with whom a residential subscriber has an established business relationship;

(c) made for the sole purpose of urging support for or opposition to a political candidate or ballot issue;

(d) made for the sole purpose of conducting political polls or soliciting the expression of opinions, ideas or votes; or

(e) by a person who is a duly licensed real estate broker pursuant to Section 61-29-11 NMSA 1978, who is a resident of the state and whose telephone call to the consumer is for the sole purpose of selling, exchanging, purchasing, renting, listing for sale or rent or leasing real estate in accordance with the provisions for which he or she is licensed and not in conjunction with any other offer."

Section 11. CONTINGENT REPEAL.--Sections 1 through 7 of this act are repealed on the date that a federal do-not-call rule adopted by the federal communications commission is effective.

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE FLOOR SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE
SUBSTITUTE FOR SENATE BILL 573,
AS AMENDED

CHAPTER 168

CHAPTER 168, LAWS 2003

AN ACT

RELATING TO UNFAIR TRADE PRACTICES; PROHIBITING CERTAIN
UNSOLICITED EMAIL OR FACSIMILE TRANSMITTED ADVERTISING MATERIAL;
PROVIDING A PRIVATE CAUSE OF ACTION.

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

Section 1. Section 57-12-1 NMSA 1978 (being Laws 1967, Chapter 268, Section 1) is amended to read:

"57-12-1. SHORT TITLE.--Chapter 57, Article 12 NMSA 1978 may be cited as the "Unfair Practices Act"."

Section 2. A new section of the Unfair Practices Act, Section 57-12-23 NMSA 1978, is enacted to read:

"57-12-23. UNSOLICITED FACSIMILES OR EMAIL--PROHIBITION.--

A. No person conducting business in this state shall transmit by facsimile or cause to be transmitted by facsimile an unsolicited advertisement unless:

(1) the person establishes a toll-free telephone number that a recipient of the unsolicited advertisement may call to notify the person not to send the recipient any additional unsolicited advertisement; and

(2) the unsolicited advertisement includes

a statement, in at least nine-point type, informing the recipient of the toll-free telephone number that the recipient may call to notify the sender not to send the recipient any additional unsolicited information.

B. No person conducting business in this state shall email or cause to be emailed an unsolicited advertisement unless:

(1) the person establishes a toll-free telephone number or a valid sender-operated return email address that a recipient of the unsolicited advertisement

may call or email to notify the person not to send the recipient any additional unsolicited advertisement;

(2) the unsolicited advertisement includes a statement, in the first text of the body of the message and in the same size as the majority of the text of the message, informing the recipient of the toll-free telephone number or the email address that the recipient may call or email to notify the sender not to send the recipient any additional unsolicited advertisement;

(3) the subject line of the email includes "ADV:" as the first four characters; and

(4) if the unsolicited advertisement advertises realty, goods, services, intangibles or the extension of credit that may only be viewed, purchased, licensed, rented, leased or held in the possession by an individual eighteen years of age or older, the subject line of the email includes "ADV:ADLT" as the first eight characters.

C. After notification by a recipient of the recipient's request not to receive any further unsolicited advertisement, no person conducting business in this state shall transmit by facsimile, cause to be transmitted by facsimile, email or cause to be emailed any unsolicited advertisement to that recipient.

D. In the case of an employer who is the registered owner of more than one email address, the notification required by Subsection C of this section may be given by the employer on behalf of all of the employees who may use email addresses provided and controlled by the employer.

E. No person shall knowingly or intentionally assist in the transmission of an unsolicited advertisement by facsimile or email if the person knows, or consciously avoids knowing, that the initiator of the advertisement is engaged, or intends to engage, in a violation of this section.

F. A violation of a provision of this section constitutes an unfair or deceptive trade practice.

G. As used in this section and Section 57-12-24 NMSA 1978:

(1) "transmit by facsimile", "cause to be transmitted by facsimile", "email", "cause to be emailed" or "assist in the transmission" does not include the transmission of an unsolicited advertisement by a telecommunications utility or an internet service provider that merely carries the transmission over its network or who acts or fails to act as allowed by contract or other law, including but not limited to 47 USCA 230(c); and

(2) "unsolicited advertisement" means information transmitted by facsimile or email that:

(a) advertises the lease, sale, license, rental, gift offer or other disposition of any realty, goods, services, intangibles or the extension of credit; and

(b) is addressed to a recipient with whom the sender does not have an existing business or personal relationship; or

(c) is not sent at the request of, or with the express consent of, the recipient."

Section 3. A new section of the Unfair Practices Act, Section 57-12-24 NMSA 1978, is enacted to read:

"57-12-24. UNSOLICITED FACSIMILES OR EMAIL--PRIVATE REMEDY.--

A. Any person who receives an unsolicited advertisement by facsimile or email may bring an action against the sender of the unsolicited advertisement to recover actual damages, including loss of profits, or statutory damages equal to the greater of twenty-five dollars (\$25.00) for each email or facsimile received or five thousand dollars (\$5,000) for each day of violation, plus reasonable attorney fees and costs if, prior to receiving the unsolicited advertisement:

(1) the person who received the unsolicited advertisement has notified the sender, pursuant to the provisions of Section 57-12-23 NMSA 1978, of the person's request not to receive unsolicited advertisements; or

(2) the sender of the unsolicited advertisement has entered into a written assurance of discontinuance pursuant to Section 57-12-9 NMSA 1978.

B. A telecommunications utility or internet service provider, injured by a violation of a provision of Section 57-12-23 NMSA 1978 or this section, may recover actual damages, including loss of profits, or statutory damages equal to the greater of ten dollars (\$10.00) for each facsimile or email transmitted or five thousand dollars (\$5,000) for each day of violation plus reasonable attorney fees and costs.

C. The remedies provided in this section are in addition to any available remedies otherwise provided

by law."

SENATE BILL 699, AS AMENDED

CHAPTER 169

CHAPTER 169, LAWS 2003

AN ACT

RELATING TO COMMERCIAL INSTRUMENTS AND TRANSACTIONS;
RESTRICTING THE CREDIT CARD ACCOUNT NUMBER INFORMATION THAT CAN
BE DISCLOSED; ENACTING THE PRIVACY PROTECTION ACT.

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

Section 1. SHORT TITLE.--Sections 1 through 3 of this act may be cited as the "Privacy Protection Act".

Section 2. DEFINITIONS.--As used in the Privacy Protection Act:

A. "business" means a commercial enterprise that:

(1) sells or leases or intends to sell or lease products, goods or services to consumers;

(2) is an agent of a business described in Paragraph (1) of this subsection; or

(3) is an agent of a nonprofit organization selling marketing services to that organization; and

B. "consumer" means a natural person, who is a resident of New Mexico, and who purchases, leases or otherwise contracts for products, goods or services within New Mexico that are primarily used for personal, family or household purposes.

Section 3. DISCLOSURE OF SOCIAL SECURITY NUMBER.--

A. Except as provided in Subsection B of this section, no business shall require a consumer's social security number as a condition for the consumer to lease or purchase products, goods or services from the business.

B. Nothing in this section prohibits a business from requiring or requesting a consumer's social security number if the number will be used in a manner consistent with state or federal law or as part of an application for credit or in connection with annuity or insurance transactions.

C. Nothing in this section prohibits a business from acquiring or using a consumer's social security number if the consumer consents to the acquisition or use.

D. A company acquiring or using social security numbers of consumers shall adopt internal policies that:

(1) limit access to the social security numbers to those employees authorized to have access to that information to perform their duties; and

(2) hold employees responsible if the social security numbers are released to unauthorized persons.

Section 4. A new section of the Credit Card Act is enacted to read:

"PROHIBITED DISCLOSURE OF CREDIT CARD NUMBER.--A person who accepts a credit card from a cardholder shall not issue a receipt that lists more than five numbers from the cardholder's credit card account number."

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2004.

CHAPTER 170

CHAPTER 170, LAWS 2003

AN ACT

RELATING TO FEDERAL MILITARY BASES; ESTABLISHING THE OFFICE OF MILITARY BASE PLANNING AND SUPPORT; ESTABLISHING THE MILITARY BASE PLANNING COMMISSION; PROVIDING FOR EFFORTS TO ENSURE THE LONG-TERM VIABILITY OF THE STATE'S MILITARY BASES; MAKING AN APPROPRIATION; ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. OFFICE OF MILITARY BASE PLANNING AND SUPPORT CREATED--DUTIES.--

A. The "office of military base planning and support" is created, which is administratively attached to the economic development department. The department shall provide administrative services to the office.

B. The secretary of economic development shall appoint a director of the office of military base planning and support.

C. The director of the office of military base planning and support shall:

(1) employ, under the authorization of the secretary of economic development, the staff necessary to carry out the work of the office of military base planning and support and the military base planning commission;

(2) support the commission;

(3) inform the governor and the secretary of economic development about issues impacting the military bases in the state, including infrastructure requirements, environmental needs, military force structure possibilities, tax implications, property considerations and issues requiring coordination and support from other state agencies;

(4) serve as a liaison with the community organizations whose purpose is to support the long-term viability of the military bases;

(5) communicate with the staff of the state's congressional delegation; and

(6) identify issues, prepare information and provide for presentations necessary for the commission to carry out its duties.

Section 2. MILITARY BASE PLANNING COMMISSION CREATED-- COMPOSITION.--

A. The "military base planning commission" is created, which is administratively attached to the economic development department. The department shall provide administrative services to the commission.

B. The military base planning commission consists of fifteen members, thirteen of which are appointed by the governor with the advice and consent of the senate. The commission shall include the lieutenant governor, the secretary of economic development and appropriate representatives from the counties, or adjoining counties, in which military bases are located.

C. The governor shall appoint a chair from among the members of the commission. The commission shall meet at the call of the chair and shall meet not less than quarterly. Members of the commission shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act.

Section 3. DUTIES.--The military base planning commission shall:

A. obtain and evaluate information about the federal government's considerations, plans, policies and initiatives relating to military base realignment and closure;

B. obtain and evaluate information relating to the impact of federal military base realignment and closure plans on the state's economy and the military base area's local economy;

C. work with and provide assistance to established community organizations that have as their purpose the support of the long-term viability of the military bases in their local area;

D. ensure collaboration among the community organizations described in Subsection C of this section and an understanding of the joint efforts between the military bases in the state;

E. work with and provide assistance to the state's congressional delegation on matters relating to federal base realignment and closure plans; and

F. advise the governor on measures necessary to ensure the continued presence of military bases in the state.

Section 4. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
The office of military base planning and support and the military base planning commission are terminated on July 1, 2005 pursuant to the provisions of the Sunset Act. The office and the commission shall continue to operate according to the provisions of this act until July 1, 2006. Effective July 1, 2006, this act is repealed.

Section 5. The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 323, AS AMENDED

CHAPTER 171

CHAPTER 171, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A NEW SECTION OF THE MANDATORY FINANCIAL RESPONSIBILITY ACT TO MANDATE COVERAGE FOR PERMISSIVE DRIVERS WITH THE EXPRESS OR IMPLIED PERMISSION OF THE OWNER OR NAMED INSURED, TO MANDATE COVERAGE FOR OPERATORS OF NON OWNED MOTOR VEHICLES AND TO MANDATE CERTAIN MOTOR VEHICLE LIABILITY POLICY COVERAGE PROVISIONS.

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

Section 1. A new section of the Mandatory Financial Responsibility Act is enacted to read:

"MOTOR VEHICLE INSURANCE POLICY--PROCEDURES.--

A. A motor vehicle insurance policy shall:

(1) designate by explicit description or by appropriate reference all motor vehicles to which coverage is to be granted; and

(2) insure the person named in the policy and a person using any such motor vehicle with the express or implied permission of the named insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of the motor vehicle within a jurisdiction, subject to the requirement

to provide evidence of financial responsibility pursuant to the Mandatory Financial Responsibility Act.

B. A motor vehicle insurance policy shall insure a person named as insured against loss from the liability imposed upon the person by law for damages arising out of the use, with the express or implied permission of the owner or person in lawful possession, of a motor vehicle that the insured person does not own. The policy shall insure the person within the same territorial limits and in compliance with the requirement of evidence of financial responsibility as set forth in the Mandatory Financial Responsibility Act with respect to a motor vehicle insurance policy. A motor vehicle liability policy in which the described vehicle is a private passenger car is not required to provide liability insurance coverage for a non-owned truck tractor designed to pull a trailer or semitrailer.

C. Permitted exceptions to coverage otherwise required by Subsections A and B of this section may include the following if excluded by the motor vehicle insurance policy:

- (1) an automobile business exclusion;
- (2) a furnished for regular use exclusion;
- (3) a vehicle rented for business use exclusion if the exclusion is contained in the motor vehicle insurance policy and is enforceable;
- (4) an exclusion for any liability of the United States government or its agencies when the provisions of the Federal Tort Claims Act apply;
- (5) an exclusion for liability of the insured under any workers' compensation law;
- (6) an exclusion for damages to property owned by, rented to, in the charge of or transported by an insured; provided, however, that this exclusion shall not apply to damages to a residence or private garage rented by an insured; and
- (7) an exclusion to apply when a vehicle is rented to others or used to carry persons for a charge; provided, however, that this exclusion shall not apply to use on a shared expense basis.

D. The motor vehicle insurance policy shall state the name and address of the insured, the coverage afforded by the policy, the premium charged, the policy period and the limits of liability. The policy shall also contain an agreement or endorsement that states that the insurance is:

(1) provided in accordance with the coverage defined in the Mandatory Financial Responsibility Act regarding bodily injury and death or property damage or both; and

(2) subject to all the provisions of that act.

E. Every motor vehicle insurance policy shall be subject to the following provisions, which may be contained in the policy:

(1) the policy may not be canceled or annulled as to the liability of the insurance carrier with respect to the insurance required by the Mandatory Financial Responsibility Act by an agreement between the insurance carrier and the insured after the occurrence of the injury or damage;

(2) the satisfaction by the insured of a judgment for injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to pay on account of injury or damage;

(3) the insurance carrier has the right to settle a claim covered by the policy. If the settlement is made in good faith, the amount of the settlement is deductible from the limits of liability specified in the Mandatory Financial Responsibility Act; and

(4) the policy, the declarations page, the written application and a rider or an endorsement that does not conflict with the provisions of the Mandatory Financial Responsibility Act constitute the entire contract between the parties.

F. A binder issued pending the issuance of a motor vehicle insurance policy is deemed to fulfill the requirements for the policy."

HOUSE TRANSPORTATION COMMITTEE

SUBSTITUTE FOR HOUSE BILL 108

CHAPTER 172

CHAPTER 172, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A

LOGO FOR RETIRED NEW MEXICO LETTER CARRIERS; IMPOSING A FEE;
MAKING AN APPROPRIATION.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. SPECIAL REGISTRATION PLATES FOR RETIRED NEW MEXICO LETTER CARRIERS.--

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient who is a retired letter carrier from the United States postal service upon the submission by the person of proof satisfactory to the department that he is a retired letter carrier. Such proof shall include the submission of a signed consent form from a postmaster.

B. A person shall not represent himself to be a retired letter carrier if that person is, in fact, not a retired letter carrier. The secretary shall determine what constitutes satisfactory proof that a person is a retired letter carrier from the United States postal service.

C. A person who violates the provisions of Subsection B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. A fee of twenty-five dollars (\$25.00), which shall be in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for retired letter carriers.

E. Ten dollars (\$10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing special registration plates for retired letter

carriers. The remaining fifteen dollars (\$15.00) shall be deposited in the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

F. The secretary shall approve the final logo design for the special registration plates for retired letter carriers in accordance with New Mexico law. The secretary shall approve and issue a separate and distinctive logo clearly marked as "retired letter carrier" for issuance to retired letter carriers."

Section 3. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

HOUSE BILL 378, AS AMENDED

CHAPTER 173

CHAPTER 173, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; REPEALING CERTAIN STATE MOTOR VEHICLE STATUTES THAT ARE IN CONFLICT WITH FEDERAL REGULATIONS.

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

Section 1. REPEAL.--Sections 66-3-858 through 66-3-872 NMSA 1978 (being Laws 1978, Chapter 35, Sections 164 through 168, Laws 1953, Chapter 139, Sections 159.6 through 159.9, Laws 1978, Chapter 35, Sections 173 through 177 and Laws 1953, Chapter 139, Section 159.15) are repealed.

HOUSE BILL 346

CHAPTER 174

CHAPTER 174, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FOR RETIRED NEW MEXICO STATE POLICE OFFICERS; IMPOSING A FEE; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. STANDARDIZED SPECIAL REGISTRATION PLATE FOR RETIRED NEW MEXICO STATE POLICE OFFICERS.--

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a person who is a retired New Mexico state police officer upon submission by the person of proof satisfactory to the division that the person is a retired New Mexico state police officer. The proof shall include the submission of a retirement commission from the New Mexico state police.

B. A person shall not represent himself to be a retired New Mexico state police officer if that person is not in fact a retired New Mexico state police officer. The secretary shall determine what constitutes satisfactory proof that a person is a retired New Mexico state police officer.

C. A person who violates the provisions of Subsection B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. A fee of twenty-five dollars (\$25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the division for the original issuance of the special registration plate for retired New Mexico state police officers.

E. Ten dollars (\$10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the division and shall be appropriated to the division to defray the cost of making and issuing special registration plates for retired New Mexico

state police officers. The remaining fifteen dollars (\$15.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978.

F. The secretary shall approve the final logo design for the special registration plates for retired New Mexico state police officers. The secretary shall approve and issue a separate and distinctive logo clearly marked as "retired New Mexico state police" for issuance to retired New Mexico state police officers."

Section 3. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

HOUSE TRANSPORTATION COMMITTEE

SUBSTITUTE FOR HOUSE BILL 464

AND SENATE BILL 210

CHAPTER 175

CHAPTER 175, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL VEHICLE REGISTRATION PLATE WITH A LOGO TO SUPPORT SPAYING AND NEUTERING OF PETS; IMPOSING A FEE; MAKING APPROPRIATIONS.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. SPECIAL PET CARE REGISTRATION PLATES.--

A. The division shall issue a standardized pet care special registration plate with a logo specified in

Section 66-3-424 NMSA 1978 indicating that the recipient supports pet care.

B. The division, with the advice and consultation of animal control offices and animal shelters in communities around the state, shall determine the color and design of the pet care special registration logo and provide for its issuance.

C. For a fee of thirty-five dollars (\$35.00) in addition to the regular motor vehicle registration fees, an owner of a motor vehicle may apply for the issuance of a pet care special registration plate. The owner of a motor vehicle shall apply and pay the fee each year that he wishes to retain and renew his pet care special registration plate.

D. The revenue from the pet care special registration plates shall be distributed as follows:

(1) ten dollars (\$10.00) of the fee collected for each pet care special registration plate shall be retained by and is appropriated to the division for the manufacture and issuance of the registration plates; and

(2) twenty-five dollars (\$25.00) of the fee collected for each pet care special registration plate shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978."

Section 3. 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 in the motor vehicle suspense fund, 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:

(a) 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; and

(b) for each such agent determined by the secretary pursuant to Section 66-2-16 NMSA 1978 to have performed ten thousand or more transactions in the preceding fiscal year, other than a class A county with a population exceeding three hundred thousand or any municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar (\$1.00) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each driver's license, identification card, motor vehicle registration, motorboat registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, 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 Subsection A of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to the fees collected pursuant to Section 66-7-413.4 NMSA 1978;

(b) an amount equal to the fee collected pursuant to Section 66-3-417 NMSA 1978;

(c) 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; and

(d) an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978;

(4) to the local governments road fund, the amount of the fees collected pursuant to Subsection B of Section 66-5-33.1 NMSA 1978 and the remainder of the fees collected pursuant to Subsection A of Section 66-5-408 NMSA 1978;

(5) to the department:

(a) any amounts reimbursed to the department pursuant to Subsection C of Section 66-2-14.1 NMSA 1978;

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

(c) an amount equal to the fees provided for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E of Section 66-2-16 NMSA 1978, Subsections J and K of Section 66-3-6 NMSA 1978 other than the administrative fee, Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(d) the amounts due to the department pursuant to Paragraph (1) of Subsection E of Section 66-3-419 NMSA 1978, Subsection E of Section 66-3-422 NMSA 1978 and Subsection E of Section 66-3-423 NMSA 1978; and

(e) an amount equal to the registration fees collected pursuant to Section 66-6-6.1 NMSA 1978 for the purposes of enforcing the provisions of the Mandatory Financial Responsibility Act and for creating and maintaining a multilanguage noncommercial driver's license testing program;

(6) to each New Mexico institution of higher education, an amount equal to that part of the fees distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-416 NMSA 1978 proportionate to the number of special registration plates issued in the name of the institution to all such special registration plates issued in the name of all institutions;

(7) to the armed forces veterans license fund, the amount to be distributed pursuant to Paragraph (2) of Subsection E of Section 66-3-419 NMSA 1978;

(8) to the children's trust fund, the amount to be distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-420 NMSA 1978;

(9) to the state highway and transportation department, an amount equal to the fees collected pursuant to Section 66-5-35 NMSA 1978;

(10) 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 Subsection D of Section 66-5-44 NMSA 1978;

(11) to the motorcycle training fund, two dollars (\$2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(12) to the highway infrastructure fund, 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;

(13) to each county, an amount equal to fifty percent of the fees collected pursuant to Section

66-6-19 NMSA 1978 multiplied by a fraction, the numerator of which is the total mileage of public roads maintained by the county and the denominator of which is the total mileage of public roads maintained by all counties in the state;

(14) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 66-6-6.2 NMSA 1978; and

(15) to the local government division of the department of finance and administration in an amount equal to the fees collected pursuant to Section 66-3-424.1 NMSA 1978 for distribution to each county to support animal control spaying and neutering programs, in an amount proportionate to the number of residents of that county who have purchased pet care special registration plates pursuant to Section 66-3-424.1 NMSA 1978.

B. The balance, exclusive of unidentified remittances, shall be distributed in accordance with

Section 66-6-23.1 NMSA 1978.

C. If any of the paragraphs, subsections or sections referred to in Subsection A of this section are recompiled or otherwise re-designated without a corresponding change to Subsection A of this section, the reference in Subsection A of this section shall be construed to be the recompiled or re-designated paragraph, subsection or section."

Section 4. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

HOUSE BILL 566, AS AMENDED

CHAPTER 176

CHAPTER 176, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FOR RETIRED MEMBERS OF THE NEW MEXICO NATIONAL GUARD; IMPOSING A FEE; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for

worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. STANDARDIZED SPECIAL REGISTRATION PLATE FOR RETIRED MEMBERS OF THE NEW MEXICO NATIONAL GUARD.--

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a person who is a retired member of the New Mexico national guard upon submission by the person of proof satisfactory to the division that the person is a retired member of the guard.

B. A person shall not represent himself to be a retired member of the New Mexico national guard if that person is not in fact a retired member of the guard.

C. A person who violates the provisions of Subsection B of this section is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. A fee of twenty-five dollars (\$25.00), which shall be in addition to the regular motor vehicle registration fee, shall be collected by the division for the original issuance of the special registration plate for retired members of the New Mexico national guard.

E. Ten dollars (\$10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates for retired members of the New Mexico national guard.

F. The amount of the fee collected pursuant to Subsection D of this section less any amount distributed pursuant to Subsection E of this section shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978.

G. The secretary shall approve the final logo design for the special registration plate for retired members of the New Mexico national guard."

Section 3. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

HOUSE TRANSPORTATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 602 AND SENATE BILL 622

CHAPTER 177

CHAPTER 177, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FOR NEW MEXICO MEMBERS OF THE FRATERNAL ORDER OF POLICE.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. SPECIAL REGISTRATION PLATES FOR NEW MEXICO MEMBERS OF THE FRATERNAL ORDER OF POLICE.--

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a New Mexico member of the fraternal order of police.

B. No person shall represent himself to be a New Mexico member of the fraternal order of police if he is, in fact, not a New Mexico member of the fraternal order of police. The secretary shall determine what constitutes satisfactory proof.

C. A person who violates the provisions of Subsection B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. A fee of twenty-five dollars (\$25.00), which shall be in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for a New Mexico member of the fraternal order of police.

E. Ten dollars (\$10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing a special registration plate for a New Mexico member of the fraternal order of police.

F. The amount of the fee collected pursuant to this section less any amount distributed pursuant to Subsection E of this section shall be deposited in the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

G. The secretary shall approve the final logo design for the special registration plates for New Mexico members of the fraternal order of police.

H. When a person holding a special plate ceases to be a New Mexico member of the fraternal order of police, he shall immediately remove the plate from the vehicle and return it to the secretary, at which time it shall be exchanged for a regular registration plate."

Section 3. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

HOUSE BILL 635, AS AMENDED

CHAPTER 178

CHAPTER 178, LAWS 2003

AN ACT

RELATING TO WILDLIFE; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FEATURING ARTWORK OF NEW MEXICO WILDLIFE.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. SPECIAL WILDLIFE ARTWORK REGISTRATION PLATES--PROCEDURES--FEE.--

A. The department shall establish and issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 featuring artwork of New Mexico wildlife for any private motor vehicle except a motorcycle. The department shall adopt procedures for application for and issuance of the special wildlife artwork registration plates.

B. The director of the department of game and fish shall designate a "share with wildlife" logo design committee that shall recommend to the director the color and design of the special wildlife artwork logo. The director in cooperation with the secretary shall determine the design of the special wildlife artwork logo. No personalized or vanity design variation of the special wildlife artwork registration plates shall be issued.

C. For a fee of twenty-five dollars (\$25.00), which shall be in addition to the regular motor vehicle registration fees, an owner of a motor vehicle may apply for the issuance of a special wildlife artwork registration plate. The owner of a motor vehicle shall apply for the plate and pay the twenty-five dollar (\$25.00) fee for the first year and

ten dollars (\$10.00) for each subsequent year if he wishes to retain and renew the special wildlife artwork registration plate.

D. The revenue from the additional fee for a special wildlife artwork registration plate shall be distributed as follows:

(1) ten dollars (\$10.00) of the initial fee collected shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978; and

(2) fifteen dollars (\$15.00) of the initial fee and the entire renewal fee collected shall be distributed to the share with wildlife program of the game protection fund."

Section 3. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

HOUSE BILL 656, AS AMENDED

CHAPTER 179

CHAPTER 179, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FOR MEMBERS OF THE CIVIL AIR PATROL, NEW MEXICO WING; IMPOSING A FEE; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute

shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. REGISTRATION PLATES FOR MEMBERS OF THE CIVIL AIR PATROL, NEW MEXICO WING.--

A. The department shall issue a standardized special registration plate with a logo specified in

Section 66-3-424 NMSA 1978 indicating that the recipient is a member of the civil air patrol, New Mexico wing upon the submission by the person of proof satisfactory to the department that he is a member of the civil air patrol, New Mexico wing. Such proof shall include the submission of a signed consent form from the civil air patrol, New Mexico wing.

B. A person shall not represent himself to be a member of the civil air patrol, New Mexico wing if that person is, in fact, not a member of the civil air patrol, New Mexico wing. The secretary shall determine what constitutes satisfactory proof that a person is a member of the civil air patrol, New Mexico wing.

C. A person who violates the provisions of Subsection B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. A fee of twenty-five dollars (\$25.00), which shall be in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for a member of the civil air patrol, New Mexico wing.

E. Ten dollars (\$10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing special registration plates for members of the civil air patrol, New Mexico wing. The remaining fifteen dollars (\$15.00) shall be deposited in the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

F. The secretary shall approve the final logo design for the special registration plates for members of the civil air patrol, New Mexico wing in accordance with New Mexico law. The secretary shall approve and issue a separate and distinctive logo clearly marked as "civil air patrol" for issuance to members of the civil air patrol, New Mexico wing."

Section 3. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

HOUSE BILL 704, AS AMENDED

CHAPTER 180

CHAPTER 180, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO COMMEMORATING ROUTE 66; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-

fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. SPECIAL ROUTE 66 COMMEMORATIVE REGISTRATION PLATE.--

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 commemorating route 66.

B. For a fee of thirty-five dollars (\$35.00), which shall be in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special route 66 commemorative registration plate. The owner shall apply and pay the

fee each year to retain and renew the special route 66 commemorative registration plate.

C. Revenue from the additional fee for a special route 66 commemorative registration plate shall be distributed as follows:

(1) ten dollars (\$10.00) of the additional fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with route 66 logo; and

(2) twenty-five dollars (\$25.00) of the additional fee shall be distributed to and is appropriated to the state highway and transportation department for the purpose of funding the revitalization and preservation of historic route 66 in New Mexico pursuant to the national scenic byways program.

Section 3. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

HOUSE BILL 760, AS AMENDED

CHAPTER 181

CHAPTER 181, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FOR RETIRED FIREFIGHTERS; IMPOSING A FEE; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. STANDARDIZED SPECIAL REGISTRATION PLATE FOR RETIRED FIREFIGHTERS.--

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a person who is a retired New Mexico firefighter upon submission by the person of proof satisfactory to the division that the person has retired from active employment as a firefighter.

B. A person shall not represent himself to be a retired New Mexico firefighter if he is not in fact a retired New Mexico firefighter. The secretary shall determine what constitutes proof of previous active employment as a firefighter and proof of retirement.

C. A person who violates the provisions of Subsection B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. A fee of twenty-five dollars (\$25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for retired New Mexico firefighters.

E. Ten dollars (\$10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and shall be appropriated to the department to defray the cost of making and issuing special registration plates for retired New Mexico firefighters.

F. The amount of the fee collected pursuant to this section less any amount distributed pursuant to Subsection E of this section shall be deposited in the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

G. The secretary shall approve the final logo design for the special registration plates for retired New Mexico firefighters."

Section 3. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

HOUSE TRANSPORTATION COMMITTEE

SUBSTITUTE FOR HOUSE BILL 201

CHAPTER 182

CHAPTER 182, LAWS 2003

AN ACT

RELATING TO STATE SYMBOLS; PROVIDING FOR AN OFFICIAL STATE BUTTERFLY, AN OFFICIAL STATE REPTILE AND AN OFFICIAL STATE AMPHIBIAN; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1999.

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

Section 1. Section 12-3-4 NMSA 1978 (being Laws 1927, Chapter 102, Section 1, as amended by Laws 1999, Chapter 266, Section 1 and also by Laws 1999, Chapter 271, Section 1) is amended to read:

"12-3-4. STATE FLOWER--STATE BIRD--STATE TREE--STATE FISH--STATE ANIMAL--STATE VEGETABLES--STATE GEM--STATE GRASS--STATE FOSSIL--STATE COOKIE--STATE INSECT--STATE QUESTION--STATE NICKNAME--STATE BUTTERFLY--STATE REPTILE--STATE AMPHIBIAN.--

- A. The yucca flower is adopted as the official flower of New Mexico.
- B. The chaparral bird, commonly called roadrunner, is adopted as the official bird of New Mexico.
- C. The nut pine or pinon tree, scientifically known as *Pinus edulis*, is adopted as the official tree of New Mexico.
- D. The native New Mexico cutthroat trout is adopted as the official fish of New Mexico.
- E. The native New Mexico black bear is adopted as the official animal of New Mexico.
- F. The chile, the Spanish adaptation of the chilli, and the pinto bean, commonly known as the frijol, are adopted as the official vegetables of New Mexico.

G. The turquoise is adopted as the official gem of New Mexico.

H. The blue grama grass, scientifically known as *Bouteloua gracilis*, is adopted as the official grass of New Mexico.

I. The coelophysis is adopted as the official fossil of New Mexico.

J. The bizcochito is adopted as the official cookie of New Mexico.

K. The tarantula hawk wasp, scientifically known as *Pepsis formosa*, is adopted as the official insect of New Mexico.

L. "Red or green?" is adopted as the official question of New Mexico.

M. "The Land of Enchantment" is adopted as the official nickname of New Mexico.

N. The Sandia hairstreak is adopted as the official butterfly of New Mexico.

O. The New Mexico whiptail lizard, scientifically known as *Cnemidophorus neomexicanus*, is adopted as the official reptile of New Mexico.

P. The New Mexico spadefoot toad, scientifically known as *Spea multiplicata*, is adopted as the official amphibian of New Mexico."

HOUSE BILL 13, AS AMENDED

CHAPTER 183

CHAPTER 183, LAWS 2003

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE ECONOMIC DEVELOPMENT CORPORATION ACT; CREATING A NONPROFIT CORPORATION, SEPARATE AND APART FROM THE STATE, TO CARRY OUT ECONOMIC DEVELOPMENT ACTIVITIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Economic Development Corporation Act".

Section 2. PURPOSES.--The purposes of the Economic Development Corporation Act are to:

A. promote, stimulate, develop and advance business, prosperity, employment and economic welfare in the state and among its citizens;

B. encourage and assist the location of new business and industry in this state and the rehabilitation and expansion of existing business and industry;

C. cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural and recreational developments in the state; and

D. provide for the creation of a nonprofit corporation with the responsibility to work with communities throughout New Mexico in effectuating these purposes in a manner that can be quantified and measured.

Section 3. CORPORATION AUTHORIZED--BOARD OF DIRECTORS--ORGANIZATION--LIMITATION OF LIABILITY.--

A. A nonprofit organization to provide economic development services to the state is authorized to be organized and formed under the provisions of the Nonprofit Corporation Act and the Economic Development Corporation Act.

B. The corporation shall be governed by a board of directors composed of fifteen members as follows:

(1) the secretary of economic development;

(2) one economic development professional, appointed by the governor, from each regional planning district, provided that no more than four of the economic development professionals shall be members of the same political party; and

(3) one professional businessperson, appointed by the governor, from each regional planning district, provided that no more than four of the professional businesspersons shall be members of the same political party.

C. The governor shall appoint a chair and the board of directors shall elect other officers as the board deems necessary.

D. The board of directors shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act, governing the conduct of the corporation in the performance of its duties under the Economic Development Corporation Act.

E. The board of directors shall hire a president who shall be the chief administrative officer of the corporation and be responsible for its operations.

F. A director, the president or another officer shall not be personally liable for any damages resulting from:

(1) any negligent act or omission of an employee of the corporation;

(2) any negligent act or omission of another director or officer of the corporation; or

(3) any action taken as a director or officer or a failure to take any action as a director or officer unless the director or officer has breached or failed to perform the duties of his office and the breach or failure to perform constitutes willful misconduct or recklessness.

Section 4. CORPORATION--POWERS.--The corporation shall have the powers conferred upon domestic nonprofit corporations by the Nonprofit Corporation Act unless otherwise specified in the Economic Development Corporation Act and shall also have the power to:

A. sue and be sued in its corporate name;

B. purchase, take, receive or otherwise acquire; own, hold, dispose of or use; and otherwise deal in and with property, including an interest in or ownership of intangible personal property, intellectual property or technological innovations;

C. sell, convey, pledge, exchange, transfer or otherwise dispose of its assets and properties for consideration upon terms and conditions that the corporation shall determine;

D. make contracts, incur liabilities or borrow money at rates of interest that the corporation may determine;

E. make and execute all contracts, agreements or instruments necessary or convenient in the exercise of the powers and functions granted the corporation by the Economic Development Corporation Act;

F. receive and administer grants, contracts and private gifts;

G. invest and reinvest its funds;

H. conduct its activities, carry on its operations, have offices and exercise the powers granted by the Economic Development Corporation Act;

I. employ officers and employees that it deems necessary, set their compensation and prescribe their duties;

J. enter into agreements with insurance carriers to insure against any loss in connection with its operations;

K. authorize retirement programs and other benefits for salaried officers and employees of the corporation; and

L. contract with economic development experts and other experts and consultants that may be required and to fix and pay their compensation.

Section 5. CORPORATION--DUTIES.--Pursuant to policies established by its board of directors and as directed by its president, the corporation shall:

A. establish relationships with communities throughout New Mexico in order to understand their economic development goals;

B. work for those communities in recruiting the types of businesses and jobs that have been identified by the communities;

C. solicit economic development funds from federal and private sources;

D. participate in economic development conferences and job fairs in order to educate businesses throughout the country and the world on the economic benefits and other attractions of New Mexico;

E. sponsor such forums and conferences as are necessary in order to empower New Mexico businesses and citizens with those business skills needed to compete in a worldwide economy; and

F. perform such other activities as are needed to further the purposes of the Economic Development Corporation Act.

Section 6. APPLICATION OF OTHER LAWS.--

A. The corporation formed pursuant to the Economic Development Corporation Act is separate and apart from the state and shall not be deemed an agency, public body or other political subdivision of New Mexico for purposes of applying laws relating to personnel, procurement of goods and services, gross receipts tax, disposition or acquisition of property, capital outlays and per diem and mileage.

B. Notwithstanding the provisions of the Open Meetings Act, meetings of the corporation shall be closed to the public when proprietary technical or business

information or any information regarding location or expansion of a business is discussed.

C. Information obtained by the corporation that is proprietary technical or business information or related to the possible relocation or expansion of a business shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act.

D. The corporation, its officers, directors and employees shall be granted immunity from liability for any tort as provided in the Tort Claims Act and may enter into agreements with insurance carriers to insure against a loss in connection with its operations even though the loss may be included among losses covered by the risk management fund of New Mexico.

HOUSE BILL 494, AS AMENDED

CHAPTER 184

CHAPTER 184, LAWS 2003

AN ACT

RELATING TO LABOR; CREATING AN EQUAL PAY TASK FORCE.

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

Section 1. TEMPORARY PROVISION--EQUAL PAY TASK FORCE--MEMBERSHIP--PURPOSE--REPORT.--

A. By July 1, 2003, the governor shall appoint an "equal pay task force" to operate from July 1 to December 1, 2003. The task force shall consist of nine members as follows:

(1) two representatives of business, from names submitted by business organizations and trade associations;

(2) two representatives of labor, from names submitted by labor unions;

(3) two representatives of organizations whose objectives include the elimination of pay disparities between men and women or between minorities and non-minorities and that have undertaken advocacy, educational or legislative initiatives in pursuit of those objectives, from names submitted by those organizations; and

(4) three persons from higher education or research institutions who have experience and expertise in the collection and analysis of data concerning pay disparities.

B. The governor shall designate the chair of the equal pay task force and the members may designate such other officers as they deem necessary. Vacancies on the task force shall be filled by appointment by the governor. Members of the task force may be reimbursed for per diem and mileage expenses as provided in the Per Diem and Mileage Act.

C. The equal pay task force shall:

(1) study the extent of wage disparities, both in the public and private sectors, between men and women and between minorities and non-minorities;

(2) study the factors that cause or tend to cause wage disparities, including segregation between men and women and between minorities and non-minorities across and within occupations and professions, payment of lower wages for female-dominated occupations, child-rearing responsibilities and education and training;

(3) study the consequences of wage disparities on the state's economy and on families; and

(4) develop actions, including legislation, that are likely to lead to the elimination and prevention of wage disparities.

D. Staff for the equal pay task force shall be provided by the labor department and the state personnel office. Other state agencies shall assist the task force as requested.

E. The equal pay task force shall make periodic reports to the legislative finance committee and other appropriate interim committees. The task force shall present its final report to the governor and the legislature by December 15, 2003. The report shall include the task force's recommendations, including proposed legislation, to eliminate and prevent wage disparities between men and women and between minorities and non-minorities.

HOUSE BILL 325, AS AMENDED

CHAPTER 185

CHAPTER 185, LAWS 2003

AN ACT

RELATING TO GAMING; REMOVING THE UPPER LIMIT ON PAYBACK VALUE FOR GAMING MACHINE WAGERS; AMENDING A SECTION OF THE GAMING CONTROL ACT.

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

Section 1. Section 60-2E-44 NMSA 1978 (being Laws 1997, Chapter 190, Section 46, as amended) is amended to read:

"60-2E-44. 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;

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;

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."

HOUSE BILL 86

CHAPTER 186

CHAPTER 186, LAWS 2003

AN ACT

RELATING TO LEGAL NOTICES; PROVIDING FOR THE ELECTRONIC POSTING OF LEGAL NOTICES.

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

Section 1. A new section of Chapter 14, Article 11 NMSA 1978 is enacted to read:

"ELECTRONIC POSTING OF LEGAL NOTICES.--

A. Legal notices and advertisements of a state agency shall be posted on the state agency's web site. If a county, municipality, board of education or other political subdivision of the state has a web site, it shall post its legal notices and advertisements on its web site. Electronic posting is not a substitute for required publication of legal notices and advertisements, and failure to electronically post shall not constitute grounds to challenge, void, set aside or otherwise delay a proceeding properly noticed and advertised pursuant to nonelectronic notice requirements.

B. Electronically posted legal notices and advertisements shall be indexed in such a way that the general public is able to easily find a particular legal notice or advertisement by subject."

HOUSE BILL 667, AS AMENDED

CHAPTER 187

CHAPTER 187, LAWS 2003

AN ACT

RELATING TO PROCUREMENT; PROVIDING CERTAIN EXEMPTIONS FROM THE PROCUREMENT CODE.

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

Section 1. A new section of the Procurement Code is enacted to read:

"ADDITIONAL EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code do not apply to contracts entered into by a local public body with a person, firm, organization, corporation, association or state educational institution named in Article 12, Section 11 of the constitution of New Mexico for:

A. the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978;

B. the lease or operation of a county hospital pursuant to the Hospital Funding Act; or

C. the operation and maintenance of a hospital pursuant to the Special Hospital District Act."

HOUSE BILL 768

CHAPTER 188

CHAPTER 188, LAWS 2003

AN ACT

RELATING TO PUBLIC FINANCE; EXTENDING THE TIME LIMIT FOR ISSUANCE OF GENERAL OBLIGATION BONDS BY CERTAIN SCHOOL DISTRICTS, COUNTIES AND MUNICIPALITIES TO FOUR YEARS.

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

Section 1. Section 6-15-9 NMSA 1978 (being Laws 1933, Chapter 114, Section 1, as amended) is amended to read:

"6-15-9. BONDS AUTHORIZED AT ELECTION--TIME LIMIT ON ISSUANCE--EXCEPTIONS.--

Bonds shall not be issued or sold by a school district, county or municipality after the expiration of four years from the date of the election authorizing the issue, except for the purpose of refunding previous bond issues or in payment of judgments. The bonds may be sold to the United States or to the state in any case in which the state or the United States has made an offer to purchase the bonds and the offer was accepted prior to the expiration of the four-year period. Any period of time when the validity of bonds or the election therefor is in litigation shall be excluded from the four-year period."

Section 2. Section 6-15-10 NMSA 1978 (being Laws 1933, Chapter 114, Section 2, as amended) is amended to read:

"6-15-10. UNISSUED BONDS AUTHORIZED AT ELECTION--WHEN VOID--EXCEPTIONS.--In all cases where bond issues by the school districts, counties or municipalities have been authorized by special election and the bonds have not been issued within four years, the time allowed in Section 6-15-9 NMSA 1978 from the date of the special election authorizing the proposed issue, the proposed bond issue is void, except where issued for refunding bonded debt or for payment of judgments against the school district, county or municipality. Such bonds may be sold to the United States or to the state at private sale in any case in which the state or the United States has made an offer to purchase the bonds and the offer was accepted prior to the expiration of the four-year period allowed in Section 6-15-9 NMSA 1978."

HOUSE BILL 164, AS AMENDED

CHAPTER 189

CHAPTER 189, LAWS 2003

AN ACT

RELATING TO THE CHILDREN'S CODE; CLARIFYING A MEMBER OF THE CLERGY'S DUTY TO REPORT CHILD ABUSE.

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

Section 1. Section 32A-4-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 97, as amended) 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 a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, 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) a tribal law enforcement or social services agency for any Indian child residing in Indian country.

B. A 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. A department office 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 a 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. A 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 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 247

CHAPTER 190

CHAPTER 190, LAWS 2003

AN ACT

RELATING TO HEALTH; PROVIDING FOR THE REGULATION OF METHADONE CLINICS BY THE DEPARTMENT OF HEALTH.

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

Section 1. METHADONE CLINICS--REGULATION BY THE DEPARTMENT OF HEALTH.--

A. The federal government requires the state to approve the establishment of all new methadone clinics. In an effort to maintain compliance with the federal requirement, the department of health shall regulate the establishment and continuance of methadone clinics in New Mexico in accordance with its powers and duties as the state's public health agency and drug abuse agency.

B. In regulating methadone clinics, the department of health shall perform an assessment of the need for clinics and develop clinical and administrative standards as required by federal law. The department may consider other factors it deems necessary to ensure the provision of drug abuse treatment services and the protection of the health and safety of New Mexico citizens.

C. For the purposes of this section, "methadone clinic" means a public or private facility that dispenses methadone for the detoxification treatment or maintenance treatment of narcotic addicts.

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 36

CHAPTER 191

CHAPTER 191, LAWS 2003

AN ACT

RELATING TO HEALTH AND SAFETY; ADDING THE DIRECTOR OF THE NEW MEXICO OFFICE OF INDIAN AFFAIRS TO THE BOARD OF MEDICAL INVESTIGATORS; REQUIRING THE OFFICE OF THE STATE MEDICAL INVESTIGATOR TO CONSULT WITH THE RELATIVES OF A DECEASED MEMBER OF AN INDIAN NATION, TRIBE OR PUEBLO REGARDING THE DISPOSITION OF ALL OF THE DECEASED'S REMAINS.

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

Section 1. Section 24-11-1 NMSA 1978 (being Laws 1971, Chapter 112, Section 1, as amended) is amended to read:

"24-11-1. BOARD OF MEDICAL INVESTIGATORS--CREATION--MEMBERSHIP--COMPENSATION.--There is created the "board of medical investigators", consisting of the dean of the university of New Mexico school of medicine, the secretary of health, the chief of the New Mexico state police, the chairman of the state board of thanatopractice and the director of the New Mexico office of Indian affairs. The members of the board of medical investigators shall receive no compensation for their services as board members other than as provided in the Per Diem and Mileage Act."

Section 2. DECEASED MEMBERS OF INDIAN NATIONS, TRIBES OR PUEBLOS--CONSULTATION REQUIRED.--If a deceased person is determined to be a member of a federally recognized Indian nation, tribe or pueblo, the state medical investigator shall use all due diligence, after any legally required autopsy or post-mortem examination, to consult with the legal next of kin of the deceased

regarding the disposition of all of the deceased's remains, unless other treatment of the remains is provided for by law.

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 49, AS AMENDED

CHAPTER 192

CHAPTER 192, LAWS 2003

AN ACT

RELATING TO HEALTH INSURANCE; REQUIRING COVERAGE FOR MEDICAL DIETS REQUIRED TO CONTROL GENETIC INBORN ERRORS OF METABOLISM; ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of Chapter 59A, Article 22 NMSA 1978 is enacted to read:

"COVERAGE FOR MEDICAL DIETS FOR GENETIC INBORN ERRORS OF METABOLISM.--

A. As of July 1, 2003, each individual and group health insurance policy, health care plan, certificate of health insurance and managed health care plan delivered, issued for delivery, renewed, extended or modified in this state shall provide coverage for the treatment of genetic inborn errors of metabolism that involve amino acid, carbohydrate and fat metabolism and for which medically standard methods of diagnosis, treatment and monitoring exist.

B. Coverage shall include expenses of diagnosing, monitoring and controlling disorders by nutritional and medical assessment, including clinical services, biochemical analysis, medical supplies, prescription drugs, corrective lenses for conditions related to the genetic inborn error of metabolism, nutritional management and special medical foods used in treatment to compensate for the metabolic abnormality and to maintain adequate nutritional status.

C. Services required to be covered pursuant to this section are subject to the terms and conditions of the applicable individual or group policy or plan that

establishes durational limits, dollar limits, deductibles and co-payments as long as the terms are not less favorable than for physical illness generally.

D. As used in this section:

(1) "genetic inborn error of metabolism" means a rare, inherited disorder that:

(a) is present at birth;

(b) if untreated, results in mental

retardation or death; and

(c) causes the necessity for consumption of special medical foods;

(2) "special medical foods" means nutritional substances in any form that are:

(a) formulated to be consumed or administered internally under the supervision of a physician;

(b) specifically processed or formulated to be distinct in one or more nutrients present in natural food;

(c) intended for the medical and nutritional management of patients with limited capacity to metabolize ordinary foodstuffs or certain nutrients contained in ordinary foodstuffs or who have other specific nutrient requirements as established by medical evaluation; and

(d) essential to optimize growth, health and metabolic homeostasis; and

(3) "treatment" means medical services provided by licensed health care professionals, including physicians, dieticians and nutritionists, with specific training in managing patients diagnosed with genetic inborn errors of metabolism."

Section 2. A new section of Chapter 59A, Article 46 NMSA 1978 is enacted to read:

"COVERAGE FOR MEDICAL DIETS FOR GENETIC INBORN ERRORS OF METABOLISM.--As of July 1, 2003, each health maintenance organization that delivers or issues for delivery in the state an individual or group contract shall provide coverage for the treatment of genetic inborn errors of metabolism as set forth in Chapter 59A, Article 22 NMSA 1978."

Section 3. A new section of Chapter 59A, Article 47 NMSA 1978 is enacted to read:

"COVERAGE FOR MEDICAL DIETS FOR GENETIC INBORN ERRORS OF METABOLISM.--As of July 1, 2003, subscriber contracts of a health care plan shall also be subject to coverage for special medical diets for genetic inborn errors of metabolism as required of health insurers in Chapter 59A, Article 22 NMSA 1978."

HOUSE BILL 289, AS AMENDED

CHAPTER 193

CHAPTER 193, LAWS 2003

AN ACT

RELATING TO PROFESSIONAL LICENSURE; ESTABLISHING REQUIREMENTS AND PROCEDURES FOR AURICULAR DETOXIFICATION SPECIALIST CERTIFICATION, SUPERVISOR REGISTRATION AND TRAINING PROGRAM APPROVAL; AUTHORIZING FEES.

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

Section 1. A new section of the Acupuncture and Oriental Medicine Practice Act is enacted to read:

"CERTIFIED AURICULAR DETOXIFICATION SPECIALISTS, SUPERVISORS AND TRAINING PROGRAMS--FEES.--

A. A person who is not a doctor of oriental medicine or who is not a person certified as an auricular detoxification specialist pursuant to the Acupuncture and Oriental Medicine Practice Act shall not:

(1) practice auricular acupuncture for the treatment of alcoholism, substance abuse or chemical dependency;

(2) use the title of or represent as a certified auricular detoxification specialist or use any other title, abbreviation, letters, figures, signs or devices that indicate that the person is certified to practice as an auricular detoxification specialist; or

(3) advertise, hold out to the public or represent in any manner that the person is authorized to practice auricular detoxification.

B. The board shall issue an auricular detoxification specialist certification to a person who has paid an application fee to the board and has successfully completed all board requirements. The board shall adopt rules that require an applicant to:

(1) successfully complete the national acupuncture detoxification association training or equivalent training approved by the board that shall include clean needle technique training;

(2) demonstrate experience in treatment, disease prevention, harm reduction and counseling of people suffering from alcoholism, substance abuse or chemical dependency or become employed by a substance abuse treatment program;

(3) complete a board-approved training program that will include examinations on clean needle technique, jurisprudence and other skills required by the board; and

(4) demonstrate a record free of convictions for drug- or alcohol-related offenses for at least two consecutive years before the person applied to the board for certification.

C. A certified auricular detoxification specialist is authorized to perform auricular acupuncture and the application to the ear of simple board-approved devices that do not penetrate the skin for the purpose of treating and preventing alcoholism, substance abuse or chemical dependency. The specialist shall use the five auricular point national acupuncture detoxification procedure or auricular procedures approved or established by rule of the board and shall only treat or prevent alcoholism, substance abuse or chemical dependency within a board-approved program that demonstrates experience in disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency.

D. A person certified pursuant to this section shall use the title "certified auricular detoxification specialist" or "C.A.D.S." for the purpose of advertising auricular acupuncture services to the public.

E. A certified auricular detoxification specialist shall apply with the board to renew the certification. The board shall for one year renew the certification of an applicant who pays a renewal fee and completes the requirements established by rule of the board. An applicant who does not apply for renewal before the last date that the certification is valid may be required to pay a late fee pursuant to a rule of the board. The board shall deem a certification for which a renewal has not been applied within sixty days of that date as expired and an applicant that seeks valid certification shall apply with the board for new certification. The board shall by rule require an applicant for renewal of the certification to demonstrate a record free of convictions for drug- or alcohol-related offenses for a minimum of one year prior to application for renewal with the board.

F. A certified auricular detoxification specialist shall practice under the supervision of a licensed doctor of oriental medicine registered with the board as an auricular detoxification specialist supervisor. A supervising doctor of oriental medicine shall be accessible for consultation directly or by telephone to a practicing auricular detoxification specialist. The supervising doctor of oriental medicine shall not supervise more specialists than permitted by board rule. Supervision requirements shall be provided by rule of the board.

G. A doctor of oriental medicine who supervises a certified auricular detoxification specialist shall apply for registration with the board. The board shall issue an auricular detoxification specialist supervisor registration to a doctor of oriental medicine who fulfills board requirements. The board shall by rule require an applicant for registration to list the certified auricular detoxification specialists that will be supervised, pay an application fee for registration and demonstrate clinical experience in treating or counseling people suffering from alcoholism, substance abuse or chemical dependency. The registration shall be valid until July 31 following the initial registration.

H. A doctor of oriental medicine who is registered to supervise certified auricular detoxification specialists shall apply to renew the registration annually with the board. The board shall renew the registration of an applicant who fulfills board requirements. The board shall by rule require an applicant to list the certified auricular detoxification specialists that the applicant is supervising and pay a fee for registration renewal. The renewed registration shall be valid for one year. An applicant who does not apply for renewal before the last date that the certification is valid may be required to pay a late fee pursuant to a rule of the board. The board shall deem a registration for which a renewal has not been applied within sixty days of that date as expired and an applicant that seeks valid registration shall apply with the board for new registration.

I. A training program that educates auricular detoxification specialists for certification shall apply for approval by the board. The board shall approve a training program that fulfills the board requirements established by rule and that pays an application fee. The approval shall be valid until July 31 following the initial approval.

J. A training program that is approved by the board to provide training for certification of auricular detoxification specialists shall apply to renew the approval with the board. The board shall renew the approval of a program that fulfills board requirements established by rule, and the renewal shall be valid for one year. An applicant who does not renew before the last date that the renewed approval is valid shall pay a late fee. The board shall deem a program approval that is not renewed within sixty days of that date as expired and a program that seeks board approval shall apply with the board for new approval.

K. The board shall impose the following fees:

(1) an application fee not to exceed one hundred fifty dollars (\$150) for auricular detoxification specialist certification;

(2) a fee not to exceed seventy-five dollars (\$75.00) for renewal of an auricular detoxification specialist certification;

(3) an application fee not to exceed two hundred dollars (\$200) for registration of a certified auricular detoxification specialist supervisor;

(4) a fee not to exceed seventy-five dollars (\$75.00) for the renewal of the registration of a certified auricular detoxification specialist supervisor;

(5) an application fee not to exceed two hundred dollars (\$200) for the approval of an auricular detoxification specialist training program;

(6) a fee not to exceed one hundred fifty dollars (\$150) for the renewal of the approval of an auricular detoxification training specialist training program; and

(7) a late fee not to exceed fifty dollars (\$50.00) for applications for renewal filed after the last valid date of a registration, certification, approval or renewal issued pursuant to this section.

L. In accordance with the procedures set forth in the Uniform Licensing Act, the board may deny, revoke or suspend any certification, registration, approval or renewal that a person holds or applies for pursuant to this section upon findings by the board that the person violated any rule established by the board."

HOUSE BILL 679, AS AMENDED

CHAPTER 194

CHAPTER 194, LAWS 2003

AN ACT

RELATING TO NATURAL RESOURCES; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT OF THE WEATHER CONTROL ACT BY THE INTERSTATE STREAM COMMISSION.

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

Section 1. Section 75-3-2 NMSA 1978 (being Laws 1965, Chapter 235, Section 2) is amended to read:

"75-3-2. DEFINITION.--As used in the Weather Control Act, "commission" means the interstate stream commission."

Section 2. Section 75-3-7 NMSA 1978 (being Laws 1965, Chapter 235, Section 7) is amended to read:

"75-3-7. ISSUANCE OF LICENSE.--The commission may issue a license to any applicant who demonstrates sufficient financial responsibility necessary to meet obligations reasonably likely to be attached to or result from weather control or cloud modification activities and skill and experience reasonably necessary to accomplishment of weather control without actionable injury to property or person."

Section 3. Section 75-3-13 NMSA 1978 (being Laws 1965, Chapter 235, Section 13) is amended to read:

"75-3-13. ENFORCEMENT.--Enforcement of the Weather Control Act is vested in the commission. All fees collected by the commission shall be used by the commission for the purposes of carrying out the provisions of the Weather Control Act."

HOUSE BILL 78

CHAPTER 195

CHAPTER 195, LAWS 2003

AN ACT

RELATING TO GAME AND FISH; ESTABLISHING THE SECOND ROD VALIDATION FOR FISHING WITH TWO FISHING RODS.

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

Section 1. Section 17-3-2 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 2, as amended) is amended to read:

"17-3-2. CLASSES OF LICENSES.--

A. As used with reference to licenses in Chapter 17 NMSA 1978:

(1) "fishing" entitles the licensee to fish for game fish during the open seasons for each species;

(2) "small game" entitles the licensee to hunt game birds, other than wild turkey, and squirrel during the open seasons for each;

(3) "deer" entitles the licensee to hunt deer during the open season;

(4) "general hunting" entitles the licensee to hunt deer, squirrel and game birds during the open seasons for each;

(5) "general hunting and fishing" entitles the licensee to hunt deer, squirrel and game birds and to fish for game fish during the open seasons for each;

(6) "antelope" entitles the licensee to hunt antelope during the open season;

(7) "elk" entitles the licensee to hunt elk during the open season;

(8) "bighorn sheep" entitles the licensee to hunt bighorn sheep during the open season;

(9) "Barbary sheep" entitles the licensee to hunt Barbary sheep during the open season;

(10) "javelina" entitles the licensee to hunt javelina during the open season;

(11) "bear" entitles the licensee to hunt bear during the open season;

(12) "nongame" entitles the licensee to hunt or take any animal or bird not protected by law;

(13) "temporary fishing" entitles the licensee to fish for game fish during a specific period of time indicated on the license;

(14) "bison" entitles the licensee to hunt bison during the open season;

(15) "oryx" entitles the licensee to hunt oryx during the open season;

(16) "ibex" entitles the licensee to hunt ibex during the open season;

(17) "cougar" entitles the licensee to hunt cougar during the open season;

(18) "turkey" entitles the licensee to hunt turkey during the open season;

(19) "special season turkey" entitles the licensee to hunt turkey during special seasons designated by the state game commission;

(20) "quality elk" entitles the licensee to hunt elk during a special quality elk season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the elk population is managed with an intent to provide the licensee an increased opportunity to take a mature elk;

(21) "quality deer" entitles the licensee to hunt deer during a special quality deer season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the deer population is managed with an intent to provide the licensee an increased opportunity to take a mature deer;

(22) "gazelle" entitles the licensee to hunt gazelle during the open season;

(23) "temporary small game" entitles the licensee to hunt game birds, except wild turkey, and squirrel during a specific period of time indicated on the license; and

(24) "second rod" entitles the licensee to fish using two fishing rods to fish for game fish during the open seasons for each species.

B. A hunting license does not entitle the licensee to hunt, kill or take game animals or birds within or upon a park or enclosure licensed or posted as provided by law or within or upon a privately owned enclosure without consent of the owner or within or upon a game refuge or game management area.

C. A fishing license does not entitle the licensee to fish for or take fish within or upon a park or enclosure licensed or posted as provided by law or within or upon a privately owned enclosure without consent of the owner or in or on closed waters.

D. A junior-senior fishing license may be purchased by a resident who has reached his twelfth birthday but has not reached his fifteenth birthday or by a resident who has reached his sixty-fifth birthday. A junior-senior fishing license entitles the licensee to fish for game fish during the open season for each species.

E. A nonresident junior fishing license may be purchased by a nonresident who has reached his twelfth birthday but has not reached his fifteenth birthday. A nonresident junior fishing license entitles the licensee to fish for game fish during the open season for each species.

F. A senior general hunting license may be purchased by a resident who has reached his sixty-fifth birthday. A senior general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open seasons for each species.

G. A handicapped fishing license may be purchased by a resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license may be purchased by a resident who has a developmental disability as defined in Subsection H of Section 43-1-3 NMSA 1978 and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license entitles the licensee to fish for game fish during the open season for each species.

H. A handicapped general hunting license may be purchased by a resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open season for each species.

I. A fishing license may be obtained at no cost by a resident who has reached his seventieth birthday.

J. A second rod validation may be purchased by either a resident or nonresident. A second rod validation entitles the licensee to fish using two rods for game fish during the open season for each species."

Section 2. Section 17-3-13 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 5, as amended) is amended to read:

"17-3-13. LICENSE FEES.--

A. The director of the department of game and fish shall keep a record of all money received and licenses and permits issued by him, numbering each class separately. Upon satisfactory proof that a license or permit has been lost before its expiration, he may issue a duplicate and collect a just and reasonable fee for it as determined by regulation of the state game commission.

B. The director of the department of game and fish shall collect the following fees for each license of the class indicated:

Resident, fishing \$17.50

Resident, small game 12.00

Resident, deer 23.00

Resident, general hunting	25.00
Resident, general hunting and fishing	37.50
Resident, junior-senior handicapped, general hunting and fishing	20.00
Resident, antelope	30.00
Resident, elk cow	37.00
Resident, elk bull or either sex	60.00
Resident, bighorn sheep	90.00
Resident, Barbary sheep	80.00
Resident, bear	30.00
Resident, turkey	15.00
Resident, cougar	30.00
Resident, bison	100.00
Resident, oryx	100.00
Resident, ibex	60.00
Resident, gazelle	25.00
Resident, javelina	40.00
Resident, fur dealer	10.00
Resident, furbearer	12.00
Resident, junior furbearer	5.00
Nonresident, fishing	39.00
Nonresident, junior fishing	18.50
Nonresident, small game	75.00

Nonresident, deer	180.00
Nonresident, quality deer	300.00
Nonresident, bear	150.00
Nonresident, cougar	200.00
Nonresident, turkey	75.00
Nonresident, antelope	186.00
Nonresident, elk cow	275.00
Nonresident, elk bull or either sex	465.00
Nonresident, quality elk	750.00
Nonresident, bighorn sheep	3,000.00
Nonresident, Barbary sheep	300.00
Nonresident, bison	1,000.00
Nonresident, oryx	1,500.00
Nonresident, ibex	1,500.00
Nonresident, gazelle	3,000.00
Nonresident, javelina	140.00
Nonresident, fur dealer	100.00
Nonresident, furbearer	300.00
Nonresident, nongame	50.00
Resident, junior-senior handicapped, fishing	5.00
Temporary fishing, one day	8.00
Temporary fishing, five days	16.00

Resident, junior-senior handicapped,
general hunting 15.00
Temporary small game, four days 35.00
Second rod validation 3.00."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003 for trout water anglers and April 1, 2004 for warm water anglers.

HOUSE BILL 516, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 196

CHAPTER 196, LAWS 2003

AN ACT

RELATING TO NATURAL RESOURCES; PROVIDING FOR A STUDY OF THE ECONOMIC FEASIBILITY OF ADDITIONAL NATURAL GAS PIPELINE SYSTEMS.

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

Section 1. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) the natural gas industry is an important contributor to the New Mexico economy, as a significant source of both employment and direct state revenues;

(2) New Mexico ranks second among the states in onshore natural gas reserves and will likely continue to be a major producer of natural gas for the foreseeable future;

(3) a study funded by Laws 1996, Chapter 7 concluded that an additional pipeline capable of transporting New Mexico natural gas to additional markets was, at that time, not economically feasible; and

(4) the study should be updated on a regular basis and the results reported to the legislature.

B. The purpose of this act is to provide a mechanism for monitoring the need for an additional natural gas pipeline in New Mexico.

Section 2. NATURAL GAS PIPELINE STUDY--ADDITIONAL DUTIES.-

A. The energy, minerals and natural resources department and the economic development department shall jointly study the need for additional natural gas pipelines to transport natural gas produced in New Mexico to additional markets. The study shall include:

(1) the economic feasibility of the proposed pipeline;

(2) the necessity of the proposed pipeline; and

(3) alternatives to the proposed pipeline and the environmental or economic benefit of the alternatives.

B. If, at any time, the study concludes that an additional natural gas pipeline is necessary, the energy, minerals and natural resources department shall give notice to all persons the department finds, in its sole discretion, to be interested in or affected by the pipeline. If, after six months from the notice, the department finds that the need still exists and persons capable of meeting the need for the pipeline have not acted or proposed to act in a manner capable of meeting the need, the energy, minerals and natural resources department and the economic development department shall report to the legislature on funding alternatives for the pipeline.

C. The energy, minerals and natural resources department and the economic development department shall annually report to the legislature on the results of the study required by Subsection A of this section and on any activities conducted pursuant to this section.

HOUSE BILL 967, AS AMENDED

CHAPTER 197

CHAPTER 197, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; DESIGNATING A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FOR ARMED FORCES RETIREES; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. SPECIAL REGISTRATION PLATES FOR ARMED FORCES RETIREES.--

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a retiree of the armed forces of the United States, if that person submits proof satisfactory to the department of retirement from the armed forces.

B. For a fee of fifteen dollars (\$15.00), which shall be in addition to the regular motor vehicle registration fees, any motor vehicle owner who is a retiree of the armed forces of the United States may apply for the issuance of a special registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. The fifteen-dollar (\$15.00) fee provided for in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special armed forces retiree plate.

D. The revenue from the special registration plates for the armed forces retirees' fee imposed by Subsection B of this section shall be distributed as follows:

(1) seven dollars (\$7.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates; and

(2) eight dollars (\$8.00) of the fee collected for each registration plate shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978."

Section 3. 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 in the motor vehicle suspense fund, 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:

(a) 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; and

(b) for each such agent determined by the secretary pursuant to Section 66-2-16 NMSA 1978 to have performed ten thousand or more transactions in the preceding fiscal year, other than a class A county with a population exceeding three hundred thousand or any municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar (\$1.00) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each driver's license, identification card, motor vehicle registration, motorboat registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, 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 Subsection A of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to the fees collected pursuant to Section 66-7-413.4 NMSA 1978;

(b) an amount equal to the fee collected pursuant to Section 66-3-417 NMSA 1978;

(c) 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; and

(d) an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978;

(4) to the local governments road fund, the amount of the fees collected pursuant to Subsection B of Section 66-5-33.1 NMSA 1978 and the remainder of the fees collected pursuant to Subsection A of Section 66-5-408 NMSA 1978;

(5) to the department:

(a) any amounts reimbursed to the department pursuant to Subsection C of Section 66-2-14.1 NMSA 1978;

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

(c) an amount equal to the fees provided for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E of Section 66-2-16 NMSA 1978, Subsections J and K of Section 66-3-6 NMSA 1978 other than the administrative fee, Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(d) the amounts due to the department pursuant to Paragraph (1) of Subsection E of Section 66-3-419 NMSA 1978, Subsection E of Section 66-3-422 NMSA 1978, Subsection E of Section 66-3-423 NMSA 1978 and Paragraph (1) of Subsection D of Section 66-3-424.1 NMSA 1978; and

(e) an amount equal to the registration fees collected pursuant to Section 66-6-6.1 NMSA 1978 for the purposes of enforcing the provisions of the Mandatory Financial Responsibility Act and for creating and maintaining a multilanguage noncommercial driver's license testing program;

(6) to each New Mexico institution of higher education, an amount equal to that part of the fees distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-416 NMSA 1978 proportionate to the number of special registration plates issued in the name of the institution to all such special registration plates issued in the name of all institutions;

(7) to the armed forces veterans license fund, the amount to be distributed pursuant to Paragraph (2) of Subsection E of Section 66-3-419 NMSA 1978;

(8) to the children's trust fund, the amount to be distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-420 NMSA 1978;

(9) to the state highway and transportation department, an amount equal to the fees collected pursuant to Section 66-5-35 NMSA 1978;

(10) 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 Subsection D of Section 66-5-44 NMSA 1978;

(11) to the motorcycle training fund, two dollars (\$2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(12) to the highway infrastructure fund, 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;

(13) to each county, an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978 multiplied by a fraction, the numerator of which is the total mileage of public roads maintained by the county and the denominator of which is the total mileage of public roads maintained by all counties in the state; and

(14) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 66-6-6.2 NMSA 1978.

B. The balance, exclusive of unidentified remittances, shall be distributed in accordance with Section 66-6-23.1 NMSA 1978.

C. If any of the paragraphs, subsections or sections referred to in Subsection A of this section are recompiled or otherwise re-designated without a corresponding change to Subsection A of this section, the reference in Subsection A of this section shall be construed to be the recompiled or re-designated paragraph, subsection or section."

Section 4. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

HOUSE BILL 75, AS AMENDED

CHAPTER 198

CHAPTER 198, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FOR ACTIVE DUTY UNIFORM SERVICE MEMBERS.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. SPECIAL REGISTRATION PLATES FOR ACTIVE DUTY UNIFORM SERVICE MEMBERS.--

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is an active duty uniform service member.

B. For a fee of twenty-five dollars (\$25.00), which shall be in addition to the regular motor vehicle registration fees, a motor vehicle owner who is an active duty uniform service member may apply for the issuance of a special registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. The twenty-five-dollar (\$25.00) fee provided in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special active duty uniform service member plate.

D. The revenue from the special active duty uniform service member registration plate fee imposed by Subsection B of this section shall be distributed as follows:

(1) ten dollars (\$10.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates; and

(2) fifteen dollars (\$15.00) of the fee collected for each registration plate shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978."

Section 3. 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 in the motor vehicle suspense fund, 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:

(a) 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; and

(b) for each such agent determined by the secretary pursuant to Section 66-2-16 NMSA 1978 to have performed ten thousand or more transactions in the preceding fiscal year, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar (\$1.00) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each driver's license, identification card, motor vehicle registration, motorboat registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, 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 Subsection A of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to the fees collected pursuant to Section 66-7-413.4 NMSA 1978;

(b) an amount equal to the fee collected pursuant to Section 66-3-417 NMSA 1978;

(c) 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; and

(d) an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978;

(4) to the local governments road fund, the amount of the fees collected pursuant to Subsection B of Section 66-5-33.1 NMSA 1978 and the remainder of the fees collected pursuant to Subsection A of Section 66-5-408 NMSA 1978;

(5) to the department:

(a) any amounts reimbursed to the department pursuant to Subsection C of Section 66-2-14.1 NMSA 1978;

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

(c) an amount equal to the fees provided for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E of Section 66-2-16 NMSA 1978, Subsections J and K of Section 66-3-6 NMSA 1978 other than the administrative fee, Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(d) the amounts due to the department pursuant to Paragraph (1) of Subsection E of Section 66-3-419 NMSA 1978, Subsection E of Section 66-3-422 NMSA 1978, Subsection E of Section 66-3-423 NMSA 1978 and Paragraph (2) of Subsection D of Section 66-3-424.1 NMSA 1978; and

(e) an amount equal to the registration fees collected pursuant to Section 66-6-6.1 NMSA 1978 for the purposes of enforcing the provisions of the Mandatory Financial Responsibility Act and for creating and maintaining a multilanguage noncommercial driver's license testing program;

(6) to each New Mexico institution of higher education, an amount equal to that part of the fees distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-416 NMSA 1978 proportionate to the number of special registration plates issued in the name of the institution to all such special registration plates issued in the name of all institutions;

(7) to the armed forces veterans license fund, the amount to be distributed pursuant to Paragraph (2) of Subsection E of Section 66-3-419 NMSA 1978;

(8) to the children's trust fund, the amount to be distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-420 NMSA 1978;

(9) to the state highway and transportation department, an amount equal to the fees collected pursuant to Section 66-5-35 NMSA 1978;

(10) 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 Subsection D of Section 66-5-44 NMSA 1978;

(11) to the motorcycle training fund, two dollars (\$2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(12) to the highway infrastructure fund, 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;

(13) to each county, an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978 multiplied by a fraction, the numerator of which is the total mileage of public roads maintained by the county and the denominator of which is the total mileage of public roads maintained by all counties in the state; and

(14) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 66-6-6.2 NMSA 1978.

B. The balance, exclusive of unidentified remittances, shall be distributed in accordance with Section 66-6-23.1 NMSA 1978.

C. If any of the paragraphs, subsections or sections referred to in Subsection A of this section are recompiled or otherwise redesignated without a corresponding change to Subsection A of this section, the reference in Subsection A of this section shall be construed to be the recompiled or redesignated paragraph, subsection or section."

Section 4. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

SENATE BILL 197, AS AMENDED

CHAPTER 199

CHAPTER 199, LAWS 2003

AN ACT

RELATING TO FRANCHISE AGREEMENTS; PROVIDING THAT A FRANCHISE AGREEMENT INVOLVING RECREATIONAL VEHICLES INCLUDE RATES CHARGED BY A DEALER FOR PERFORMING WARRANTY SERVICE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 57-16-6.2 NMSA 1978 (being Laws 1995, Chapter 19, Section 2) is amended to read:

"57-16-6.2. RECREATIONAL VEHICLES--FRANCHISE

AGREEMENTS.--

A. Every recreational vehicle manufacturer, distributor or representative shall execute a written franchise or sales agreement with each of its recreational vehicle dealers. Each agreement shall include the following provisions:

- (1) warranty service obligations, including rates charged by a dealer for performing warranty service;
- (2) specific territory or market area designation;
- (3) grounds for termination;
- (4) repurchase obligations;
- (5) sales volume and performance; and
- (6) dispute resolution procedures.

B. Notwithstanding the provisions of Subsection A of this section, a dealer and manufacturer, distributor or representative may mutually agree not to include the provisions listed in Paragraphs (2) through (6) of Subsection A of this section; provided, however, a written declaration stating which of the provisions were intentionally omitted and not applicable shall be incorporated into the written agreement."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 240

CHAPTER 200

CHAPTER 200, LAWS 2003

AN ACT

RELATING TO REAL ESTATE TRANSACTIONS; REQUIRING LENDERS TO MAKE FUNDS AVAILABLE AT THE TIME OF CLOSING OF A REAL ESTATE TRANSACTION; PROVIDING FOR WHEN FUNDS MAY BE DISBURSED.

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

Section 1. AVAILABLE FUNDS REQUIRED AT CLOSING.--

A. Unless the consideration necessary to complete a sale of real property or the refinancing of an existing loan has been previously delivered, a person shall not close on the sale of real property or the refinancing involving a loan from a financial institution until the lender provides available funds to a third-party fiduciary conducting the closing in an amount sufficient to complete the sale or the refinancing and to pay, in accordance with the conditions and instructions of the parties to the transaction, all sums required to be paid through and at the time of the closing. The title company may disburse available funds once the deed and mortgage are recorded with the county clerk.

B. As used in this section, "available funds" means funds subject to immediate withdrawal by cash or check in a depository account with a financial institution, held in the name of and subject to the control of a third-party fiduciary conducting the closing, not including a person or entity that is a party to the transaction, cooperating in the closing of a transaction.

SENATE BILL 315, AS AMENDED

CHAPTER 201

CHAPTER 201, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FOR SEARCH AND RESCUE MEMBERS.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements

specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. SPECIAL REGISTRATION PLATES FOR SEARCH AND RESCUE MEMBERS.--

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a search and rescue member.

B. For a fee of twenty-five dollars (\$25.00), which shall be in addition to the regular motor vehicle registration fees, a motor vehicle owner who is a search and rescue member may apply for the issuance of a special registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. The twenty-five dollars (\$25.00) fee provided in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special search and rescue member plate.

D. The revenue from the special search and rescue member registration plate fee imposed by Subsection B of this section shall be distributed as follows:

(1) ten dollars (\$10.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates; and

(2) fifteen dollars (\$15.00) of the fee collected for each registration plate shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978."

Section 3. 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 in the motor vehicle suspense fund, 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:

(a) 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; and

(b) for each such agent determined by the secretary pursuant to Section 66-2-16 NMSA 1978 to have performed ten thousand or more transactions in the preceding fiscal year, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar (\$1.00) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each driver's license, identification card, motor vehicle registration, motorboat registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, 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 Subsection A of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to the fees collected pursuant to Section 66-7-413.4 NMSA 1978;

(b) an amount equal to the fee collected pursuant to Section 66-3-417 NMSA 1978;

(c) 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; and

(d) an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978;

(4) to the local governments road fund, the amount of the fees collected pursuant to Subsection B of Section 66-5-33.1 NMSA 1978 and the remainder of the fees collected pursuant to Subsection A of Section 66-5-408 NMSA 1978;

(5) to the department:

(a) any amounts reimbursed to the department pursuant to Subsection C of Section 66-2-14.1 NMSA 1978;

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

(c) an amount equal to the fees provided for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E of Section 66-2-16 NMSA 1978, Subsections J and K of Section 66-3-6 NMSA 1978 other than the administrative fee, Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(d) the amounts due to the department pursuant to Paragraph (1) of Subsection E of Section 66-3-419 NMSA 1978, Subsection E of Section 66-3-422 NMSA 1978, Subsection E of Section 66-3-423 NMSA 1978 and Paragraph (2) of Subsection D of Section 66-3-424.1 NMSA 1978; and

(e) an amount equal to the registration fees collected pursuant to Section 66-6-6.1 NMSA 1978 for the purposes of enforcing the provisions of the Mandatory Financial Responsibility Act and for creating and maintaining a multilanguage noncommercial driver's license testing program;

(6) to each New Mexico institution of higher education, an amount equal to that part of the fees distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-416 NMSA 1978 proportionate to the number of special registration plates issued in the name of the institution to all such special registration plates issued in the name of all institutions;

(7) to the armed forces veterans license fund, the amount to be distributed pursuant to Paragraph (2) of Subsection E of Section 66-3-419 NMSA 1978;

(8) to the children's trust fund, the amount to be distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-420 NMSA 1978;

(9) to the state highway and transportation department, an amount equal to the fees collected pursuant to Section 66-5-35 NMSA 1978;

(10) 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 Subsection D of Section 66-5-44 NMSA 1978;

(11) to the motorcycle training fund, two dollars (\$2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(12) to the highway infrastructure fund, 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;

(13) to each county, an amount equal to fifty percent of the fees collected pursuant to Section

66-6-19 NMSA 1978 multiplied by a fraction, the numerator of which is the total mileage of public roads maintained by the county and the denominator of which is the total mileage of public roads maintained by all counties in the state; and

(14) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 66-6-6.2 NMSA 1978.

B. The balance, exclusive of unidentified remittances, shall be distributed in accordance with Section 66-6-23.1 NMSA 1978.

C. If any of the paragraphs, subsections or sections referred to in Subsection A of this section are recompiled or otherwise redesignated without a corresponding change to Subsection A of this section, the reference in Subsection A of this section shall be construed to be the recompiled or redesignated paragraph, subsection or section."

Section 4. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

SENATE BILL 549, AS AMENDED

CHAPTER 202

CHAPTER 202, LAWS 2003

AN ACT

RELATING TO INSURANCE; AMENDING AND REPEALING SECTIONS OF THE NEW MEXICO INSURANCE CODE TO PROVIDE FOR LICENSURE PROCEDURES AND TECHNICAL CLEANUP.

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

Section 1. Section 29-13-3 NMSA 1978 (being Laws 1983, Chapter 289, Section 3, as amended) is amended to read:

"29-13-3. DISTRIBUTION OF CERTAIN INSURANCE DEPARTMENT COLLECTIONS--LAW ENFORCEMENT PROTECTION FUND CREATED.--There is created in the state treasury the "law enforcement protection fund". Ten percent of all money received for fees, licenses, penalties and taxes from life, general casualty and title insurance business pursuant to the New Mexico Insurance Code shall be paid monthly to the state treasurer and by him credited to the fund. On or before June 30 of each year, the state treasurer shall transfer to the general fund any balance in the law enforcement protection fund in excess of one hundred thousand dollars (\$100,000) that is not obligated and that is in excess of the amount certified by the division to be distributed from that fund."

Section 2. Section 59A-5-19 NMSA 1978 (being Laws 1984, Chapter 127, Section 86, as amended) is amended to read:

"59A-5-19. SPECIAL DEPOSIT OR BOND.--

A. To qualify for and continue to hold a certificate of authority to transact insurance in this state, the insurer shall also make a special deposit in trust for the benefit only of all its policyholders and creditors in this state in applicable amount as shown in Schedule I of Section 59A-5-16 NMSA 1978. The deposit shall consist of assets eligible therefor under Section 59A-10-3 NMSA 1978 and shall be deposited with or through the superintendent or in a commercial depository located in the state of New Mexico approved by the superintendent subject to rules and regulations issued by the superintendent.

B. In lieu of such deposit, the insurer may file with the state treasurer of New Mexico through the superintendent a surety bond issued by a surety insurer authorized to transact such insurance in this state, in penal sum not less than the

aggregate special deposits required by this section. The bond shall be in such form as may be prescribed by the attorney general of New Mexico. The bond shall not be subject to cancellation except upon not less than sixty days advance written notice to the superintendent by the insurer or surety; and the insurer shall promptly replace, not later than fifteen days prior to expiration of the bond, with another like bond, any bond so canceled or otherwise terminated. The bond shall expressly provide that failure of the insurance company to replace a canceled or terminated bond as provided in this section shall constitute a breach of the condition upon which the bond is given, upon which occurrence the superintendent may immediately recover from the surety the penal sum of the bond to be held as a special deposit in the manner described in Subsection A of this section.

C. The special deposit, or bond in lieu thereof, shall remain on deposit or on file and in force for so long as there may arise in this state any claim under any policy issued by the insurer covering a subject located or a service to be performed in this state or claim arising out of the insurer's operations in this state.

D. Whenever because of volume of business being transacted by the insurer, methods of doing business, regulatory practices of the domiciliary state or for other good cause the superintendent deems advisable for protection of policyholders and creditors, the superintendent may require an insurer to make and maintain a special deposit in reasonable amount greater than required under Schedule I of Section 59A-5-16 NMSA 1978, but no greater than one hundred fifteen percent of its direct unpaid losses in New Mexico.

E. The special deposit shall be subject to the applicable provisions of Chapter 59A, Article 10 NMSA 1978.

F. This section shall not apply as to domestic Lloyds plan automobile insurers as identified in Chapter 59A, Article 38 NMSA 1978."

Section 3. Section 59A-10-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 163, as amended) is amended to read:

"59A-10-3. SECURITIES ELIGIBLE FOR DEPOSIT.--

A. All general deposits required under Section 59A-5-18 NMSA 1978 and special deposits required under Section 59A-5-19 NMSA 1978, in the minimum amount specified therefor, shall consist of public obligations of the type eligible for investment of funds of domestic insurers under Section 59A-9-6 NMSA 1978.

B. All additional general or special deposits required by the superintendent under Section 59A-5-18 or 59A-5-19 NMSA 1978 shall consist of:

(1) public obligations as referred to in Subsection A of this section;

(2) corporate obligations of the kind in which a domestic insurer may invest funds pursuant to Section 59A-9-8 NMSA 1978, if the security has such rating and additional qualifications as the superintendent may from time to time by rule or regulation reasonably prescribe for deposit purposes; and

(3) notes or bonds secured by mortgages insured and debentures issued by the federal housing administrator and obligations of national mortgage associations.

C. Evidences of indebtedness secured by real property shall be eligible for deposit only if the real property securing the indebtedness is situated in New Mexico.

D. Notwithstanding any other provision of law, the securities qualified for deposit under Chapter 59A, Article 10 NMSA 1978 by domestic insurance companies may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the deposit requirements set forth in this article shall be under the control of the superintendent and shall not be withdrawn by the insurance company without the approval of the superintendent. Any insurance company holding securities in such manner shall provide to the superintendent evidence issued by its custodian or member bank through which such insurance company has deposited such securities in a clearing corporation or through which such securities are held in the federal reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank and that the records of the custodian, other participant or member bank reflect that such securities are held subject to the order of the superintendent.

E. Notwithstanding any other provision of law, securities eligible for deposit under the insurance laws of this state relating to deposit of securities by a foreign insurance company as a condition of commencing or continuing to do an insurance business in this state may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the deposit requirements under the insurance laws of this state shall be under the control of the superintendent and shall not be withdrawn by the insurance company without the approval of the superintendent. Any insurance company holding such securities in such manner shall provide to the superintendent evidence issued by its custodian or a member bank through which such insurance company has deposited securities with a clearing corporation or held in the federal reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank and evidence that the records of the custodian, other participant or member bank reflect that such securities are held subject to the order of the superintendent.

F. Deposits of a domestic insurer held in this state pursuant to the laws of another state, province or country (other than the general deposit provided for by Section 59A-5-18 NMSA 1978) shall consist of such assets as are required or permitted by the laws of such state, province or country.

G. Deposits of foreign insurers made in this state under Section 59A-5-33 NMSA 1978 shall consist of such assets as are required by the superintendent pursuant to such law."

Section 4. Section 59A-11-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 181, as amended) is amended to read:

"59A-11-2. APPLICATION FOR LICENSE--INDIVIDUAL.--

A. Where a license is required under the Insurance Code for categories referred to in Section 59A-11-1 NMSA 1978, application by an individual shall be filed with, and on a form prescribed by, the superintendent. The application shall be signed by the applicant, under oath if required by the form.

B. The application form may require information about the applicant as to:

(1) name, date of birth, social security number, residence and business address, if applicable;

(2) personal history, business experience in general;

(3) experience or special training or education in the kind of business to be transacted under the license applied for;

(4) previous licensing;

(5) type of license applied for and kinds of insurance or transactions to be covered thereby;

(6) proof of applicant's identity; and

(7) such other pertinent information and matters as the superintendent may reasonably require.

C. The application form shall also require information as to additional matters expressly required to be included therein in articles of the Insurance Code relating to particular licenses.

D. The application shall be accompanied by the applicable license application filing fee specified in Section 59A-6-1 NMSA 1978 and by the fee specified

in such fee schedule for any examination required under the Insurance Code to be taken and passed by the applicant prior to licensing.

E. The superintendent may require a criminal history background investigation of the applicant for a license by means of fingerprint checks by the department of public safety and the federal bureau of investigation.

F. The superintendent may obtain from the department of public safety and the federal bureau of investigation, at the expense of the applicant for a license, criminal history information concerning each applicant, using the applicant's fingerprints or other identifying information. The information shall be used by the superintendent solely in determining whether to grant the application."

Section 5. Section 59A-11-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 189, as amended by Laws 1999, Chapter 272, Section 4 and also by Laws 1999, Chapter 289, Section 5) is amended to read:

"59A-11-10. CONTINUATION, EXPIRATION OF LICENSE.--

A. Each license, other than insurance agent, issued under this article shall continue in force until it is suspended, revoked or otherwise terminated, but except as may be provided pursuant to Section 59A-11-11 NMSA 1978, subject to payment to the superintendent annually on or before April 1, or December 31 as to motor club representatives, of the applicable continuation fee specified in Section 59A-6-1 NMSA 1978 accompanied by request for such continuation:

(1) for broker, surplus line broker, independent adjuster, bail bondsman license and similar other independent licensees, request shall be made and signed by the licensee;

(2) for agent (other than insurance agent) or staff adjuster, or solicitor license, request shall be made and signed by the employer or other principal, as applicable; or

(3) for vending machine, request shall be made and signed by the supervisory agent thereof.

B. Subject to Section 59A-11-11 NMSA 1978, any license referred to in Subsection A of this section, not so continued shall be deemed to have terminated as of midnight on April 30, or December 31 as to motor club representatives, then current; except that the superintendent may effectuate a request for continuation received within thirty days thereafter if accompanied by annual continuation fee equal to one hundred fifty percent of the continuation fee otherwise required.

C. Within sixty days of obtaining an agent license, the licensee shall become appointed by an authorized insurer to act as its agent; otherwise the license

shall expire. A person shall not act as an agent of an insurer unless the person becomes appointed as an agent of the insurer. Within fifteen days from the date an agency contract is executed or the first insurance application from the person is accepted by the insurer, the insurer shall file a notice of appointment on a form approved by the superintendent. The agent or the insurer may terminate an appointment by notifying the superintendent and the other party in writing of the termination. If at any time all of the licensee's appointments have been terminated for a period of sixty days, the agent's license shall expire.

D. If the superintendent has reason to believe that the competence of any licensee, or individual designated to exercise license powers, is questionable, the superintendent may require as condition to continuation of the license or license powers that the licensee or individual take and pass to the superintendent's satisfaction a written examination as required under the Insurance Code of new individual applicants for similar license.

E. This section shall not apply as to temporary licenses, which shall be for such duration and subject to extension as provided in the respective sections of the Insurance Code by which such licenses are authorized.

F. All licenses and appointments as to an insurer or other principal which ceases to be authorized to transact business in this state shall automatically terminate without notice as of date of such cessation.

G. A license shall also terminate upon death of the licensee, if an individual, or dissolution if a corporation, or change in partnership members if a firm; subject, in case of a firm, to continuation of the license for a reasonable period while application for new license is being made or pending, under reasonable conditions provided in regulations of the superintendent."

Section 6. Section 59A-12-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 207) is amended to read:

"59A-12-6. LICENSE REQUIRED--PENALTY.--

A. No person shall in this state be, act as or hold himself out to be, as to subjects of insurance resident, located or to be performed in this state or elsewhere, an agent or solicitor unless then licensed as such under the Insurance Code.

B. No authorized insurer shall accept insurance of any subject located, resident or to be performed in this state through any person acting as insurance agent in this state if the insurer knows, or reasonably should have known, that such person was not then licensed as an agent as to such insurance or not appointed as its agent by the insurer.

C. No license as agent or broker shall be issued to any entity other than an individual, firm (partnership) or corporation.

D. No agent or solicitor shall solicit or take an application for, or place for others, any kind of insurance as to which not then so licensed.

E. No agent shall place any insurance with any insurer as to which not then licensed or appointed as agent under the Insurance Code.

F. A license as agent or solicitor, or appointment as agent of a particular insurer, shall not be in effect until the license has actually been delivered to the agent or solicitor or to the solicitor's employer agent or the appointment has been duly filed with and approved by the superintendent.

G. In addition to any applicable denial, suspension or revocation of license, refusal to continue license, or administrative fine, violation of this section shall be a misdemeanor punishable by a fine of from one hundred dollars (\$100) to five hundred dollars (\$500) and by forfeiture to the state of New Mexico of an amount equal to all compensation for services as agent or solicitor received or to be received by the violator by reason of the prohibited transactions."

Section 7. Section 59A-12-22 NMSA 1978 (being Laws 1984, Chapter 127, Section 223) is amended to read:

"59A-12-22. FIDUCIARY FUNDS--AGENTS, BROKERS, SOLICITORS, SURPLUS LINE BROKERS, BAIL BONDSMEN, MOTOR CLUB AGENTS AND OTHERS.--

A. All funds of others received by any person licensed or acting as an insurance agent, broker, solicitor, surplus line broker, bail bondsman or solicitor, motor club agent, or agent or solicitor for health care plan, prepaid dental plan, or in any similar capacity for which licensing of such person is required under the Insurance Code, are received and held by such person in a fiduciary capacity. Any such person who diverts or appropriates such funds to his own use, or takes or secretes with intent to embezzle, all without consent of the person entitled to such funds, is guilty of larceny by embezzlement.

B. Subject to the terms of any agreement between such person or licensee and his principal or obligee, each such person who does not make immediate remittance of such funds to the insurer or other person entitled thereto, shall elect and follow as to funds received for account of a particular insurer or person either of the following methods:

(1) remit received premiums (less applicable commissions, if any) and return premiums to the insurer or other person entitled thereto within fifteen days after such receipt; or

(2) establish and maintain in a commercial bank or other established financial institution depository one or more accounts, separate from accounts holding general personal, firm or corporate funds, and forthwith deposit and retain therein pending transmittal to the insurer or other person entitled thereto, all such premiums (net of applicable commissions, if any) and return premiums. Funds belonging to more than one principal may be as deposited and held in the same such account so long as the amount held for each such principal is readily ascertainable from the records of the depositor. The depositor may commingle with such fiduciary funds in a particular such account such additional funds as the licensee deems prudent for advancing premiums, reserves for payment of return commissions, or for other contingencies arising in the business of receiving and transmitting premiums or return premiums.

C. Such person may commingle with his own funds to an unlimited amount funds of a particular principal who has in writing in advance expressly waived the segregation requirements of Subsection B of this section.

D. Any commingling of funds with funds of any such person permitted under this section shall not alter the fiduciary capacity of such person as to funds of others."

Section 8. Section 59A-14-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 248) is amended to read:

"59A-14-10. OFFICE AND RECORDS.--

A. A surplus line broker shall maintain an office accessible to the public wherein transactions under his license may be transacted. Nothing herein shall be deemed to prohibit maintenance of the office in the surplus line broker's place of residence, subject to accessibility above stated.

B. The surplus line broker shall keep in the office complete records of surplus line insurance business transacted, including, but not limited to, income and disbursements, copies of all policies, endorsements, cancellations, filing documents, reports and other related records. The records shall be made available for examination by the superintendent at all times within seven years after issuance of a coverage to which the record relates.

C. The surplus line broker shall immediately notify the superintendent in writing of any change of office address. Failure to notify the superintendent of a change of address within twenty days shall subject the licensee to a penalty in the amount of fifty dollars (\$50.00)."

Section 9. Section 59A-17-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 305, as amended) is amended to read:

"59A-17-9. FILING OF RATES (OTHER THAN WORKERS' COMPENSATION).--
As to insurance subject to Chapter 59A, Article 17 NMSA 1978, other than workers' compensation insurance, every insurer shall file with the superintendent all rates and supplementary rate information and all changes and amendments thereof made by it for use in this state at least sixty days before their proposed effective date. No filing made pursuant to this section shall become effective nor shall it be used until approved or deemed approved by the superintendent in accordance with Section 59A-17-13 NMSA 1978, at which time it may be used."

Section 10. Section 59A-17-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 313, as amended) is amended to read:

"59A-17-17. USE OF RATE SERVICE ORGANIZATION ADVISORY FILINGS.--

A. An insurer may itself establish rates and supplementary rate information for any market segment based on the factors set forth in Section 59A-17-7 NMSA 1978 or it may in its rate filing incorporate by reference loss costs and other supplementary rate information prepared by a rate service organization, with such modification for its own loss experience as the credibility of that experience allows.

B. Nothing in Chapter 59A, Article 17 NMSA 1978 shall be construed as requiring any insurer to become a member of or subscriber to any rate service organization.

C. The superintendent may adopt rules establishing standards and administrative procedures to carry out the provisions of this section."

Section 11. Section 59A-18-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 342, as amended) is amended to read:

"59A-18-12. FILING OF FORMS AND CLASSIFICATIONS--REVIEW OF EFFECT UPON INSURED.--

A. An insurance policy or annuity contract shall not be delivered or issued for delivery in this state, nor shall any assumption certificate, endorsement, rider or application that becomes a part of any such policy be used, until a copy of the form and the classification of risks pertaining thereto have been filed with the superintendent. Any such filing shall be made at least sixty days before its proposed effective date. A filing made pursuant to this section shall not become effective nor shall it be used until approved by the superintendent pursuant to Section 59A-18-14 NMSA 1978, at which time it may be used. Provided, that:

(1) this subsection shall not apply as to policies, contracts, endorsements or riders of unique and special character not for general use or offering but designed and used solely as to a particular insured or risk; and

(2) if the superintendent has exempted a person or a class of persons or a market segment from a part or all of the provisions of the Insurance Rate Regulation Law pursuant to Subsection C of Section 59A-17-2 NMSA 1978, the superintendent also may exempt by rule that person, class of persons or market segment from a part or all of the provisions of this subsection.

B. A workers' compensation insurance policy covering a risk arising from the employment of a worker performing work for an employer in New Mexico when that employer is not domiciled in New Mexico shall not be issued or become effective, nor shall any endorsement or rider covering such a risk be issued or become effective, until a copy of the form and the classification of risks pertaining thereto have been filed with the superintendent.

C. Any insured may in writing request the insurer to review the manner in which its filing has been applied as to insurance afforded him. If the insurer fails to make a review and grant appropriate relief within thirty days after the request is received, the insured may file a written complaint and request for a hearing with the superintendent, stating grounds relied upon. If the complaint charges a violation of the Insurance Code and the superintendent finds that the complaint was made in good faith and that the insured would be aggrieved if the violation is proved, he shall hold a hearing, with notice to the insured and insurer stating the grounds of complaint. If upon the hearing the superintendent finds the complaint justified, he shall order the insurer to correct the matter complained of within a reasonable time specified but not less than twenty days after a copy of his order was mailed to or served upon the insurer."

Section 12. Section 59A-22-42 NMSA 1978 (being Laws 2001, Chapter 14, Section 1) is amended to read:

"59A-22-42. COVERAGE FOR PRESCRIPTION CONTRACEPTIVE DRUGS OR DEVICES.--

A. Each individual and group health insurance policy, health care plan and certificate of health insurance delivered or issued for delivery in this state that provides a prescription drug benefit shall provide coverage for prescription contraceptive drugs or devices approved by the food and drug administration.

B. Coverage for food and drug administration-approved prescription contraceptive drugs or devices may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same policy, plan or certificate.

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

D. A religious entity purchasing individual or group health insurance coverage may elect to exclude prescription contraceptive drugs or devices from the health coverage purchased."

Section 13. Section 59A-46-44 NMSA 1978 (being Laws 2001, Chapter 14, Section 3) is amended to read:

"59A-46-44. COVERAGE FOR PRESCRIPTION CONTRACEPTIVE DRUGS OR DEVICES.--

A. Each individual and group health maintenance organization contract delivered or issued for delivery in this state that provides a prescription drug benefit shall provide coverage for prescription contraceptive drugs or devices approved by the food and drug administration.

B. Coverage for food and drug administration-approved prescription contraceptive drugs or devices may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same contract.

C. A religious entity purchasing individual or group health maintenance organization coverage may elect to exclude prescription contraceptive drugs or devices from the health coverage purchased."

Section 14. Section 59A-51-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 941) is amended to read:

"59A-51-14. DENIAL, SUSPENSION, REVOCATION OR REFUSAL TO CONTINUE LICENSE.--

A. The superintendent may deny, suspend, revoke or refuse to continue any license issued under Chapter 59A, Article 51 NMSA 1978 for any of the following causes or for any violation of the laws of this state relating to bail or the bail bond business:

(1) for any cause for which issuance of the license could have been refused had it then existed and been known to the superintendent;

(2) material misstatement, misrepresentation or fraud in obtaining the license;

(3) misappropriation, conversion or unlawful withholding of money belonging to insurers or others and received in the conduct of business under the license;

(4) fraudulent or dishonest practices in the conduct of business under the license;

(5) willful failure to comply with, or willful violation of any proper order, rule or regulation of the superintendent;

(6) failure or refusal, upon demand, to pay over to any insurer he represented, any money coming into his hands belonging to the insurer;

(7) willful failure to return collateral security to the principal when the principal is entitled thereto;

(8) for knowingly having in his employ a person whose bail bond business license has been revoked, suspended or denied in this or any other state; or

(9) willful failure, neglect or refusal to supervise a solicitor's activities in his behalf.

B. When, in the judgment of the superintendent, the licensee in the conduct of affairs under the license has demonstrated incompetency, untrustworthiness, conduct or practices rendering him unfit to engage in the bail bond business, or making his continuance in such business detrimental to the public interest, or that he is no longer in good faith engaged in the bail bond business, or that he is guilty of rebating, or offering to rebate his commissions in the case of limited surety agents or premiums in the case of professional bondsmen, and for such reasons is found by the superintendent to be a source of detriment, injury or loss to the public, he shall revoke or suspend the license.

C. In case of the suspension or revocation of license of any bail bondsman, the license of any or all other bail bondsmen who are members of the same agency and any or all solicitors employed by such agency, who knowingly were parties to the act that formed the ground for the suspension or revocation shall likewise be suspended or revoked, except for the purpose of completing pending matters, and those persons who knowingly were parties to the act are prohibited from being licensed as a member of or bail bondsman or solicitor for some other agency.

D. No license under Chapter 59A, Article 51 NMSA 1978 shall be issued, renewed or permitted to exist when the same is used directly or indirectly to circumvent the provisions of that article."

Section 15. TEMPORARY PROVISION--RECOMPILATION.--Section 59A-2-9.2 NMSA 1978 (being Laws 2000, Chapter 58, Section 1) is recompiled as Section 59A-16-21.1 NMSA 1978.

Section 16. REPEAL.--Sections 59A-14-8 and 59A-18-15 NMSA 1978 (being Laws 1984, Chapter 127, Sections 246 and 345) are repealed.

SENATE BILL 557

CHAPTER 203

CHAPTER 203, LAWS 2003

AN ACT

RELATING TO PUBLIC PROPERTY; ALLOWING THE SALE OF PROPERTY BY NEGOTIATED SALE TO PUBLIC ENTITIES OR PRIVATE PERSONS; RECONCILING MULTIPLE AMENDMENTS IN LAWS 2001.

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

Section 1. Section 13-6-2 NMSA 1978 (being Laws 1979, Chapter 195, Section 3, as amended by Laws 2001, Chapter 291, Section 9 and also by Laws 2001, Chapter 317, Section 2) is amended to read:

"13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL PUBLIC BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--APPROVAL OF APPROPRIATE APPROVAL AUTHORITY.--

A. Providing a written determination has been made, a state agency, local public body, school district or state educational institution may sell or otherwise dispose of real or tangible personal property belonging to the state agency, local public body, school district or state educational institution.

B. A state agency, local public body, school district or state educational institution may sell or otherwise dispose of real property:

(1) by negotiated sale or donation to an Indian nation, tribe or pueblo located wholly or partially in New Mexico, or to a governmental unit of an Indian nation, tribe or pueblo in New Mexico, that is authorized to purchase land and control activities on its land by an act of congress or to purchase land on behalf of the Indian nation, tribe or pueblo;

(2) by negotiated sale or donation to other state agencies, local public bodies, school districts or state educational institutions; or

(3) through the central purchasing office of the state agency, local public body, school district or state educational institution by means of competitive sealed bid, public auction or negotiated sale to a private person.

C. Disposal of tangible personal property under this section shall be:

(1) by negotiated sale or donation to an Indian nation, tribe or pueblo in New Mexico;

(2) by negotiated sale or donation to other state agencies, local public bodies, school districts or state educational institutions;

(3) through the central purchasing office of the governmental entity by means of competitive sealed bids, negotiated sale or public auction; or

(4) if a state agency, through the federal property assistance bureau of the general services department.

D. A state agency shall give the federal property assistance bureau of the general services department the right of first refusal to dispose of tangible personal property of the state agency. A school district may give the department the right of first refusal to dispose of tangible personal property of the school district.

E. Except as provided in Section 13-6-2.1 NMSA 1978 requiring state board of finance approval for certain transactions, sale or disposition of real or tangible personal property having a current resale value of more than five thousand dollars (\$5,000) may be made by a state agency, local public body, school district or state educational institution if the sale or disposition has been approved by the state budget division of the department of finance and administration for state agencies, the local government division of the department of finance and administration for local public bodies, the state department of public education for school districts and the commission on higher education for state educational institutions.

F. Prior approval of the appropriate approval authority is not required if the tangible personal property is to be used as a trade-in or exchange pursuant to the provisions of the Procurement Code.

G. The appropriate approval authority may condition the approval of the sale or other disposition of real or tangible personal property upon the property being offered for sale or donation to a state agency, local public body, school district or state educational institution.

H. The appropriate approval authority may credit a payment received from the sale of such real or tangible personal property to the governmental body making the sale. The state agency, local public body, school district or state educational institution may convey all or any interest in the real or tangible personal property without warranty.

I. This section shall not apply to:

- (1) computer software of a state agency;
- (2) those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico;
- (3) the New Mexico state police division of the department of public safety;
- (4) the state land office or the state highway and transportation department;
- (5) property acquired by a museum through abandonment procedures pursuant to the Abandoned Cultural Properties Act;
- (6) leases of county hospitals with any person pursuant to the Hospital Funding Act; and
- (7) the state parks division of the energy, minerals and natural resources department."

SENATE BILL 690, AS AMENDED

CHAPTER 204

CHAPTER 204, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING SPECIAL REGISTRATION PLATES FOR VETERANS WHO ARE ONE HUNDRED PERCENT DISABLED; AMENDING A SECTION OF THE MOTOR VEHICLE CODE.

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

Section 1. Section 66-3-412 NMSA 1978 (being Laws 1979, Chapter 299, Section 2, as amended) is amended to read:

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

A. The department shall issue distinctive registration plates for up to two vehicles, including motorcycles, to a person who is a veteran of the armed forces of the United States, as defined in Section 28-13-7 NMSA 1978, and was one hundred percent disabled while serving in the armed forces of the United States, upon the submission by the person of proof satisfactory to the department that he was one hundred percent disabled while serving in the armed forces of the United States. No fee, including the regular registration fee applicable to the passenger motor vehicle or regular motorcycle registration fees, if any, shall be collected for issuance of a special registration plate pursuant to this section. A person eligible for a special registration plate pursuant to this section and also eligible for one or more special registration plates pursuant to Sections 66-3-406, 66-3-409, 66-3-411 and 66-3-412.1 NMSA 1978 shall be issued only one special registration plate of his choice.

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

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

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 693

CHAPTER 205

CHAPTER 205, LAWS 2003

AN ACT

RELATING TO TAX RECEIPTS; PROVIDING THAT CERTAIN RECEIPTS, ORIGINALLY INTENDED FOR COUNTY HOSPITALS, BE DISTRIBUTED TO MUNICIPALITIES TO ENABLE THE MUNICIPALITIES TO OPERATE THE HOSPITALS.

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

Section 1. 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. Except as provided in Subsection B of this section 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 7-1-6.41 NMSA 1978.

B. In lieu of a distribution pursuant to Subsection A of this section to a class B county with a population, as shown in the last federal decennial census, of more than twenty-five thousand and a net taxable value in the 2002 property tax year of less than two hundred million dollars (\$200,000,000), the department shall make a distribution of the following amounts to the largest municipality in that county for the purpose of maintaining and operating a hospital:

(1) amounts attributable to the second one-eighth percent increment of the local option gross receipts tax; and

(2) amounts attributable to the special county hospital gross receipts tax."

Section 2. Section 7-20C-6 NMSA 1978 (being Laws 1991, Chapter 176, Section 6, as amended) 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 7-1-6.41 NMSA 1978. Except as provided in Subsection C of this section, 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.

C. In lieu of a transfer pursuant to Subsection B of this section to a class B county with a population, as shown in the last federal decennial census, of more than twenty-five thousand and a net taxable value in the 2002 property tax year of less than

two hundred million dollars (\$200,000,000), the department shall make the transfer to the largest municipality in that county for the purpose of maintaining and operating a hospital."

Section 3. Section 7-24B-3 NMSA 1978 (being Laws 1987, Chapter 45, Section 12) is amended to read:

"7-24B-3. USE OF PROCEEDS.--

A. Except as provided in Subsection B of this section, the proceeds of the special county hospital gasoline tax shall be used for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county and the use of these proceeds shall be for the care and maintenance of sick and indigent persons and shall be an expenditure for a public purpose.

B. In the case of a class B county with a population, as shown in the last federal decennial census, of more than twenty-five thousand and a net taxable value in the 2002 property tax year of less than two hundred million dollars (\$200,000,000), the proceeds from the special county hospital gasoline tax shall not be used by the county but shall be transferred to and used by the largest municipality in that county for current operation and maintenance of a hospital."

Section 4. TEMPORARY PROVISION--NO IMPAIRMENT OF EXISTING BONDS.--No change in distribution, otherwise required by the provisions of this act, shall be made if the change will impair any outstanding bonds or other debt obligations of a county. In such a case, notwithstanding the provisions of this act, the distribution shall continue to be made pursuant to the terms of the bonds or other obligations until the debt is fully satisfied, at which time the distribution shall be made pursuant to the provisions of this act.

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 713, AS AMENDED

CHAPTER 206

CHAPTER 206, LAWS 2003

AN ACT

RELATING TO WATER; AMENDING THE GROUND WATER STORAGE AND RECOVERY ACT TO PROVIDE ELIGIBILITY FOR THE INTERSTATE STREAM COMMISSION TO STORE AND RETRIEVE WATER PURSUANT TO THAT ACT.

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

Section 1. Section 72-5A-3 NMSA 1978 (being Laws 1999, Chapter 285, Section 3) is amended to read:

"72-5A-3. DEFINITIONS.--As used in the Ground Water Storage and Recovery Act:

A. "aquifer" means a geologic formation that contains sufficient saturated material to be capable of storing and transmitting water in usable quantities to a well;

B. "area of hydrologic effect" means the underground area where the water is stored and located, hydrologically connected surface waters, adjacent underground areas in which water rights exist that may be impaired, the land surface above the underground areas and any additional land surface used for seepage or infiltration;

C. "governmental entity" means the interstate stream commission, an Indian nation, tribe or pueblo or state political subdivision, including a municipality, county, acequia, irrigation district or conservancy district;

D. "project" means a permitted, engineered facility designed specifically, constructed and operated pursuant to the Ground Water Storage and Recovery Act, to add measured volumes of water by injection or infiltration to an aquifer or system of aquifers, to store the water underground and to recover it for beneficial use pursuant to the Ground Water Storage and Recovery Act but shall not include in situ leach mining operations or water flood operations for petroleum recovery that require approval by the state engineer outside the Ground Water Storage and Recovery Act; and

E. "stored water" means water that has been stored underground for the purpose of recovery and permitted pursuant to the Ground Water Storage and Recovery Act."

SENATE BILL 742, AS AMENDED

CHAPTER 207

CHAPTER 207, LAWS 2003

AN ACT

RELATING TO HEALTH CARE PROVIDERS; EXEMPTING CERTAIN PROVIDERS FROM VICARIOUS LIABILITY FOR THE ACTIONS OF A PERSONAL CARE ATTENDANT HIRED AND TRAINED BY A CONSUMER OR HIS REPRESENTATIVE.

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

Section 1. A new section of the Public Assistance Act is enacted to read:

"FISCAL INTERMEDIARY--EXEMPTIONS--WORKERS' COMPENSATION.--

A. A fiscal intermediary shall not be subject to vicarious liability as an employer or principal for a wrongful act committed by a personal care attendant if the attendant:

(1) is not a current or former employee of the fiscal intermediary;

(2) has not received training or instruction from the fiscal intermediary with respect to providing personal care services to a disabled person, not including administrative paper work;

(3) has been hired by and received training or instruction from the consumer or his authorized representative to provide personal care to the consumer; and

(4) provides basic assistance with daily living activities that do not require the education, certification or training of a licensed health care practitioner.

B. A fiscal intermediary may identify a personal care attendant as a covered employee with the fiscal intermediary's workers' compensation carrier solely to provide workers' compensation coverage in the event of a work-related injury. Nothing in this subsection shall be construed to create an employer-employee relationship between the fiscal intermediary and the personal care attendant.

C. Nothing in this section shall be construed to provide the fiscal intermediary with immunity from a claim for a wrongful act committed by the fiscal intermediary or its employees.

D. As used in this section:

(1) "consumer" means a person who is eligible for and receives state-funded or -operated services based on the person's disabilities;

(2) "fiscal intermediary" means a provider that furnishes administrative assistance for a consumer who selects a consumer-directed, rather than consumer-delegated, personal care program;

(3) "personal care attendant" means a person who provides assistance to a consumer with activities of daily living, including bathing, dressing, eating, transportation, shopping and similar activities; and

(4) "personal care program" means a state-funded or -operated support program, including medicaid, that provides the services of a personal care attendant for certain disabled individuals."

SENATE BILL 823

CHAPTER 208

CHAPTER 208, LAWS 2003

AN ACT

RELATING TO MUNICIPALITIES; CLARIFYING THAT A MAYOR VOTES TO BREAK TIES.

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

Section 1. Section 3-12-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-11-2, as amended) is amended to read:

"3-12-2. GOVERNING BODY--CORPORATE AUTHORITY-- LEGISLATIVE BODY--MEMBERS OF COUNCIL AND BOARDS OF TRUSTEES-- QUORUM.--

A. The corporate authority of a municipality is vested in the governing body that shall constitute the legislative branch of the municipality and shall not perform any executive functions except those functions assigned to it by law.

B. A majority of the members of the governing body is a quorum for the purpose of transacting business.

C. Unless otherwise provided by law, a question before the governing body shall be decided by a majority vote of the members present.

D. The governing body of a municipality having a mayor-council form of government is the council or board of trustees whose members are the mayor and not

less than four or more than ten councilmen or trustees. Any governing body of more than six councilmen or trustees may provide by ordinance for the election of two councilmen or trustees for each ward or district or create or abolish wards or districts or alter the boundary of existing wards or districts; provided that only one councilman or trustee shall be elected from a ward or district at any one election.

E. In those municipalities with a mayor-council form of government, when there is a requirement that a certain fraction or percentage of the members of the entire governing body or of all the members of the governing body or of the entire membership of the governing body or other similar language other than the requirement of a simple majority vote for the measure, the mayor shall not be counted in determining the actual number of votes needed but he shall vote to break a tie vote as provided in Section 3-11-3 NMSA 1978 unless he has declared a conflict of interest.

F. The governing body of a municipality may redistrict the municipality whenever redistricting is warranted. Upon petition signed by qualified electors equal in number to the votes cast for the councilman or trustee receiving the greatest number of votes at the last regular municipal election, the governing body of the municipality shall redistrict the municipality."

SENATE BILL 825

CHAPTER 209

CHAPTER 209, LAWS 2003

AN ACT

RELATING TO WATER; DIRECTING THE OFFICE OF THE STATE ENGINEER TO PURCHASE, INSTALL AND STUDY ALTERNATIVE DEVICES TO ACCURATELY MEASURE THE FLOW OF RIVER WATER.

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

Section 1. OFFICE OF THE STATE ENGINEER--DEVICES TO MEASURE RIVER WATER.--The office of the state engineer shall purchase, install and study prototypes of alternative devices that accurately measure the flow of river water on a real-time basis. In carrying out the purpose of this section, the office of the state engineer shall consult with and utilize the services of the Los Alamos national laboratory, the Sandia national laboratories and the United States geological

survey.

SENATE CONSERVATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 832

CHAPTER 210

CHAPTER 210, LAWS 2003

AN ACT

RELATING TO DISABILITIES; PROVIDING FOR CONSUMER DIRECTION OF PERSONAL ASSISTANCE SERVICES IN CERTAIN PUBLICLY FUNDED PROGRAMS.

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

Section 1. SHORT TITLE.--This act may be cited as the "Consumer Direction Act".

Section 2. PURPOSE.--The purpose of the Consumer Direction Act is to ensure a consumer the right to direct his personal assistance services if he so chooses by selecting an attendant appropriate to his needs and to maximize personal assistance service availability and satisfaction.

Section 3. DEFINITIONS.--As used in the Consumer Direction Act:

A. "attendant" means a person, including an allowable family member, who provides personal assistance services;

B. "consumer" means a person receiving personal assistance services through any personal assistance programs offered by the state of New Mexico;

C. "department" means any department or agency of the state offering personal assistance service to individuals;

D. "fiscal intermediary" means a person or entity selected by agreement between the consumer and the department under contract to the department to assist the consumer to perform certain employment functions, including payroll responsibilities for the attendant and filing necessary eligibility information with the department;

E. "personal assistance services" means a prescribed course of regular personal care, including hygiene, mobility and daily living assistance that permits a person to live in his home rather than an institution, including bathing, dressing, grooming, eating, toileting, shopping, transporting, cueing medication administration and communicating;

F. "plan" means a written and signed agreement between a consumer or surrogate and the department for the provision of personal assistance services; and

G. "surrogate" means a family member, legal guardian or other person approved by the consumer and identified in the personal assistance services plan to assist in direction of personal assistance services and choice of attendant.

Section 4. CONSUMER DIRECTION PROGRAMS AUTHORIZED.--
Consistent with the federal Social Security Act and subject to the appropriation and availability of federal and state funds, each administering department or agency shall by rule provide a program permitting a consumer or surrogate to direct personal assistance services through the hiring, supervision and training of an attendant or attendants paid through a fiscal intermediary under contract with the department.

Section 5. DEPARTMENT DUTIES.--A department shall:

A. establish by rule the criteria and procedures for developing and amending a personal assistance services plan with a consumer;

B. develop criteria and procedures for selection of a fiscal intermediary to contract with the department to provide fiscal intermediary services to a consumer; and

C. establish rates for reimbursement of an attendant providing personal assistance services to a consumer and for the compensation of a fiscal intermediary.

Section 6. REPORT.--Annually by October 1, each department shall deliver a report to the legislative finance committee and the legislative health and human services committee on services provided pursuant to the Consumer Direction Act and a comparison of those services and services provided by the department through other means and an evaluation of the effectiveness and consumer satisfaction with the respective means of service delivery.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 839

CHAPTER 211

CHAPTER 211, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FOR RETIRED NEW MEXICO STATE POLICE OFFICERS; IMPOSING A FEE; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. STANDARDIZED SPECIAL REGISTRATION PLATE FOR RETIRED NEW MEXICO STATE POLICE OFFICERS.--

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a person who is a retired New Mexico state police officer upon submission by the person of proof satisfactory to the division that the person is a retired New Mexico state police officer. The proof shall include the submission of a retirement commission from the New Mexico state police.

B. No person shall represent himself to be a retired New Mexico state police officer if that person is, in fact, not a retired New Mexico state police officer. The

secretary shall determine what constitutes satisfactory proof that a person is a retired New Mexico state police officer.

C. A person who violates the provisions of Subsection B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. A fee of twenty-five dollars (\$25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the division for the original issuance of the special registration plate for retired New Mexico state police officers.

E. Ten dollars (\$10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates for retired New Mexico state police officers. The remaining fifteen dollars (\$15.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978.

F. The secretary shall approve the final logo design for the special registration plate for retired New Mexico state police officers. The logo shall be clearly marked as "retired New Mexico state police".

Section 3. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

SENATE BILL 211, AS AMENDED

CHAPTER 212

CHAPTER 212, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A DESCRIPTION OF AND REQUIREMENTS FOR A STANDARDIZED SPECIAL REGISTRATION PLATE; PROVIDING FOR A STANDARDIZED SPECIAL REGISTRATION PLATE WITH A LOGO FOR THE NEW MEXICO HIGH SCHOOL RODEO ASSOCIATION; ESTABLISHING A FEE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-3-424 NMSA 1978, is enacted to read:

"66-3-424. STANDARDIZED SPECIAL REGISTRATION PLATES WITH LOGOS.--

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section."

Section 2. A new Section of the Motor Vehicle Code, Section 66-3-424.1 NMSA 1978, is enacted to read:

"66-3-424.1. SPECIAL REGISTRATION PLATES--NEW MEXICO HIGH SCHOOL RODEO ASSOCIATION.--

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating support for the New Mexico high school rodeo association.

B. The owner of a motor vehicle may apply for the issuance of a standardized special New Mexico high school rodeo association registration plate with a logo pursuant to the procedures of the division. The owner shall pay a fee of thirty-five dollars (\$35.00) for initial issuance and the same fee for each subsequent year in which he wishes to retain and renew his special plate. The fee is in addition to regular applicable motor vehicle registration fees.

C. The revenue from issuance of special New Mexico high school rodeo association registration plates shall be distributed as follows:

(1) ten dollars (\$10.00) of the fee collected for each registration plate shall be retained by the division and is appropriated to the division for the manufacture and issuance of the registration plates; and

(2) twenty-five dollars (\$25.00) of the fee collected for each registration plate shall be distributed to the New Mexico high school rodeo association to be used in its scholarship program."

Section 3. EFFECTIVE DATE.--Except for Section 1 of this act, the effective date of the provisions of this act is January 1, 2004. The effective date of the provisions of Section 1 of this act is July 1, 2003.

SENATE BILL 493, AS AMENDED

CHAPTER 213

CHAPTER 213, LAWS 2003

AN ACT

RELATING TO ALCOHOL; PROVIDING THAT MONEY IN THE LOCAL DWI GRANT FUND MAY BE USED FOR PROGRAMS TO REDUCE OR PREVENT THE INCIDENCE OF DOMESTIC ABUSE RELATED TO ALCOHOLISM OR ALCOHOL ABUSE; AMENDING SECTIONS OF THE LOCAL DWI GRANT PROGRAM ACT.

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

Section 1. Section 11-6A-3 NMSA 1978 (being Laws 1993, Chapter 65, Section 3, as amended) 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:

(1) new, innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse, drug addiction or drug abuse; and

(2) programs, services or activities to prevent or reduce the incidence of domestic abuse related to DWI, alcoholism, alcohol abuse, drug addiction or drug abuse.

B. Grants shall be awarded by the council pursuant to the advice and recommendations of the division.

C. The "local DWI grant fund" is created in the state treasury and shall be administered by the division. Two million five hundred thousand dollars (\$2,500,000) of liquor excise tax revenues distributed to the fund and all other money in the fund, other than money appropriated for distribution pursuant to Subsections D and E of this section and 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 and to evaluate DWI grantees and the local DWI grant program. Money in the fund may be used for drug courts. An amount equal to the liquor excise tax revenues distributed annually to the

fund less five million six hundred thousand (\$5,600,000) 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 six hundred thousand dollars (\$600,000) 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.

D. Two million eight hundred thousand dollars (\$2,800,000) of the liquor excise tax revenues distributed to the local DWI grant fund is appropriated to the division for distribution to the following counties in the following amounts for funding of alcohol detoxification and treatment facilities:

(1) one million seven hundred thousand dollars (\$1,700,000) to class A counties with a population of over three hundred thousand persons according to the 1990 federal decennial census;

(2) three hundred thousand dollars (\$300,000) each to counties reclassified in 2002 as class A counties with a population of more than ninety thousand but less than one hundred thousand persons according to the 1990 federal decennial census;

(3) two hundred thousand dollars (\$200,000) to class B counties with a population of more than thirty thousand but less than forty thousand persons according to the 1990 federal decennial census;

(4) one hundred fifty thousand dollars (\$150,000) to class B counties with a population of more than sixty-two thousand but less than sixty-five thousand persons according to the 1990 federal decennial census; and

(5) one hundred fifty thousand dollars (\$150,000) to class B counties with a population of more than thirteen thousand but less than fifteen thousand persons according to the 1990 federal decennial census.

E. Three hundred thousand dollars (\$300,000) of the liquor excise tax revenues distributed to the local DWI grant fund is appropriated to the division for the interlock device fund to cover the costs of installing and removing ignition interlock devices for indigent people who are required, pursuant to convictions under Section 66-8-102 NMSA 1978, to install those devices in their vehicles.

F. In awarding DWI grants to local communities, the council:

(1) may fund new or existing innovative or model programs, services or activities 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 new or existing innovative or model programs, services or activities of any kind designed to prevent or reduce the incidence of domestic abuse related to DWI, alcoholism or alcohol abuse;

(4) may fund existing community-based programs, services or facilities for prevention and treatment of domestic abuse related to DWI, alcoholism or alcohol abuse;

(5) 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

(6) 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 by the council and approved pursuant to Chapter 43, Article 3 NMSA 1978 and only for programs, services or activities consistent with that plan. A DWI plan shall also comply with local DWI grant program rules and guidelines.

G. The council shall use the criteria in Subsection F of this section to approve DWI programs, services or activities for funding through the county DWI program distribution. Sixty-five percent of the DWI grants awarded to local communities shall be used for alcohol-related treatment and detoxification programs."

Section 2. Section 11-6A-5 NMSA 1978 (being Laws 1993, Chapter 65, Section 5, as amended) is amended to read:

"11-6A-5. ADMINISTRATION OF LOCAL DWI GRANT PROGRAM AND COUNTY DWI PROGRAM DISTRIBUTION--REGULATIONS.--

A. The division shall administer and evaluate the local 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 local DWI grant program and the county DWI program distribution, including:

(1) forms and procedures for the application process for the local DWI 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 grants were awarded; and

(5) design of an evaluation mechanism for DWI grant programs, distributions and services and submission by each DWI grantee of an annual report or other data on each local DWI grant program, distribution or service and its effectiveness and outcomes."

Section 3. Section 11-6A-6 NMSA 1978 (being Laws 1997, Chapter 182, Section 2, as amended) is amended to read:

"11-6A-6. DISTRIBUTION OF CERTAIN LOCAL 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 five million six hundred thousand dollars (\$5,600,000) 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 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. The request shall also comply with local DWI grant program rules and guidelines.

D. No later than April 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 a distribution no later than July 1 of each year. The division shall make the annual distribution to each county in quarterly installments on or before each September 10, December 10, March 10 and June 10, beginning in September 2004. 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 local DWI grant fund at the end of the month prior to the quarterly installment due date and after one million three hundred twenty-five thousand dollars (\$1,325,000) has been set aside for the DWI grant program and after the appropriations and distributions pursuant to Subsections D and E of Section 11-6A-3 NMSA 1978.

E. If a county does not have a 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, 2000 through December 31, 2002, 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 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE BILLS 190 AND 257, AS AMENDED

CHAPTER 214

CHAPTER 214, LAWS 2003

AN ACT

RELATING TO TAXATION; INCREASING THE GROSS RECEIPTS AND COMPENSATING TAX DEDUCTIONS FOR JET FUEL FROM FORTY PERCENT TO FIFTY-FIVE PERCENT FOR A PERIOD OF FOUR YEARS.

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

Section 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994, Chapter 5, Section 2, as amended) is amended to read:

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

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

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

C. From July 1, 2002 through June 30, 2007, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to forty-six thousandths percent of the net receipts attributable to the gross receipts tax distributable to the general fund."

Section 2. Section 7-9-83 NMSA 1978 (being Laws 1993, Chapter 364, Section 1) is amended to read:

"7-9-83. DEDUCTION--GROSS RECEIPTS TAX--JET FUEL.--

A. From July 1, 2003 through June 30, 2007, fifty-five percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts.

B. After June 30, 2007, forty percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts."

Section 3. Section 7-9-84 NMSA 1978 (being Laws 1993, Chapter 364, Section 2) is amended to read:

"7-9-84. DEDUCTION--COMPENSATING TAX--JET FUEL.--

A. From July 1, 2003 through June 30, 2007, fifty-five percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due.

B. After June 30, 2007, forty percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due."

Section 4. EFFECTIVE DATE.--

A. The effective date of the provisions of Section 1 of this act is August 1, 2003.

B. The effective date of the provisions of Sections 2 and 3 of this act is July 1, 2003.

HOUSE BILL 62, AS AMENDED

CHAPTER 215

CHAPTER 215, LAWS 2003

AN ACT

RELATING TO REIMBURSEMENT FOR PER DIEM AND MILEAGE EXPENSES; INCREASING RATES; PROVIDING FOR THE REIMBURSEMENT OF MEMBERS OF THE STATE FAIR COMMISSION PURSUANT TO THE PER DIEM AND MILEAGE ACT.

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

Section 1. Section 10-8-4 NMSA 1978 (being Laws 1963, Chapter 31, Section 3, as amended) is amended to read:

"10-8-4. PER DIEM AND MILEAGE RATES--IN LIEU OF
PAYMENT.--

A. Notwithstanding any other specific law to the contrary and except as provided in Subsection I of this section, every nonsalaried public officer shall receive

either reimbursement pursuant to the provisions of Subsection K or L of this section or up to ninety-five dollars (\$95.00) per diem expenses:

(1) for each board or committee meeting attended; or

(2) for each day spent in discharge of official duties for travel within the state but away from his home.

Nonsalaried public officers who travel to attend a board or committee meeting may elect to be reimbursed per diem under either Paragraph (1) or (2) of this subsection.

B. Every salaried public officer or employee who is traveling within the state but away from his home and away from his designated post of duty on official business shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or:

(1) up to eighty-five dollars (\$85.00) per diem expenses for each day spent in the discharge of his official duties for a salaried public officer or employee of a local public body or state agency. If the secretary finds that a per diem allowance of eighty-five dollars (\$85.00) is inadequate for reimbursement of expenses in any municipality of this state, the secretary may authorize the reimbursement of per diem for travel to the municipality not to exceed one hundred thirty-five dollars (\$135); or

(2) up to eighty-five dollars (\$85.00) per diem expenses for each day spent in the discharge of his official duties for a salaried public officer or employee of a public post-secondary educational institution. If the governing board finds that a per diem allowance of eighty-five dollars (\$85.00) is inadequate for reimbursement of expenses in any municipality of this state, the governing board may authorize the reimbursement of per diem for travel to the municipality not to exceed one hundred thirty-five dollars (\$135).

C. Every public officer or employee shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or:

(1) for public officers or employees of a state agency or local public body, up to one hundred fifteen dollars (\$115) per diem expenses for each day of travel outside the state on official business. If the secretary finds that a per diem allowance of one hundred fifteen dollars (\$115) is inadequate for out-of-state travel to a geographical area, the secretary may authorize per diem not to exceed two hundred fifteen dollars (\$215) for out-of-state travel to that geographical area; provided that the secretary may authorize per diem for travel to a locality inside or outside the continental United States for a public officer or employee who is reimbursed solely from federal funds in accordance with the rate allowed by the federal government for travel to that locality. In lieu of per diem, a person trained in the field of accountancy and performing duties in that field of training as an employee while assigned for periods exceeding three weeks

per assignment to travel out of state on official business may receive either reimbursement pursuant to the provisions of Subsection K of this section or actual expenses not to exceed two hundred fifteen dollars (\$215) per day. Expenses shall be substantiated in accordance with rules promulgated by the department of finance and administration. The secretary may promulgate rules defining what constitutes out-of-state travel for purposes of the Per Diem and Mileage Act; or

(2) for public officers or employees of a public post-secondary educational institution, up to one hundred fifteen dollars (\$115) per diem expenses for each day of travel outside the state on official business. If the governing board finds that a per diem allowance of one hundred fifteen dollars (\$115) is inadequate for out-of-state travel to a geographical area, the governing board may authorize per diem not to exceed two hundred fifteen dollars (\$215) for out-of-state travel to that geographical area; provided that the governing board may authorize per diem for travel to a locality inside or outside the continental United States for a public officer or employee who is reimbursed solely from federal funds in accordance with the rate allowed by the federal government for travel to that locality. Expenses shall be substantiated in accordance with rules promulgated by the governing board. The governing board may promulgate rules defining what constitutes out-of-state travel for purposes of the Per Diem and Mileage Act.

D. Every public officer or employee shall receive thirty-two cents (\$.32) a mile for each mile traveled in a privately owned vehicle or eighty-eight cents (\$.88) a mile for each mile traveled in a privately owned airplane if the travel is necessary to the discharge of his official duties and if the private conveyance is not a common carrier; provided, however, that only one person shall receive mileage for each mile traveled in a single privately owned vehicle or airplane except in the case of common carriers, in which case the person shall receive the cost of the ticket in lieu of the mileage allowance.

E. The per diem and mileage or per diem and cost of tickets for common carriers paid to salaried public officers or employees is in lieu of actual expenses for transportation, lodging and subsistence.

F. In addition to the in-state per diem set forth in this section, the department of finance and administration, by rule, may authorize a flat subsistence rate in the amount set by the legislature in the general appropriation act for commissioned officers of the New Mexico state police in accordance with rules promulgated by the department of finance and administration.

G. In lieu of the in-state per diem set in Subsection B of this section, the department of finance and administration may, by rule, authorize a flat monthly subsistence rate for certain employees of the state highway and transportation department, provided that the payments made under this subsection shall not exceed the maximum amount that would be paid under Subsection B of this section.

H. Per diem received by nonsalaried public officers for travel on official business or in the discharge of their official duties, other than attending a board or committee meeting, and per diem received by public officers and employees for travel on official business shall be prorated in accordance with rules of the department of finance and administration or the governing board.

I. The provisions of Subsection A of this section do not apply to payment of per diem expense to a nonsalaried public official of a municipality for attendance at board or committee meetings held within the boundaries of the municipality.

J. In addition to any other penalties prescribed by law for false swearing on an official voucher, it shall be cause for removal or dismissal from office.

K. With prior written approval of the secretary or the secretary's designee or the local public body, a nonsalaried public officer of a state agency or local public body, a salaried public officer of a state agency or local public body or a salaried employee of a state agency or local public body is entitled to per diem expenses under this subsection and shall receive:

(1) reimbursement for actual expenses for lodging; and

(2) reimbursement for actual expenses for meals not to exceed thirty dollars (\$30.00) per day for in-state travel and forty-five dollars (\$45.00) per day for out-of-state travel.

L. With prior written approval of the governing board or its designee, a nonsalaried public officer of a public post-secondary educational institution, a salaried public officer of a public post-secondary educational institution or a salaried employee of a public post-secondary educational institution is entitled to per diem expenses under this subsection and shall receive:

(1) reimbursement for actual expenses for lodging; and

(2) reimbursement for actual expenses for meals not to exceed thirty dollars (\$30.00) per day for in-state travel and forty-five dollars (\$45.00) per day for out-of-state travel."

Section 2. Section 16-6-10 NMSA 1978 (being Laws 1961, Chapter 110, Section 1) is amended to read:

"16-6-10. FAIR COMMISSION--EXPENSES.--Members of the state fair commission shall receive no salary, but each member shall receive per diem and mileage pursuant to the Per Diem and Mileage Act."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 220

CHAPTER 216

CHAPTER 216, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; REQUIRING NOTIFICATION OF REPLACED OR REPURCHASED VEHICLES; PROVIDING QUALITY ASSURANCE STANDARDS FOR USED MOTOR VEHICLES.

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

Section 1. Section 57-16A-2 NMSA 1978 (being Laws 1985, Chapter 220, Section 2) is amended to read:

"57-16A-2. DEFINITIONS.--As used in the Motor Vehicle Quality Assurance Act:

A. "collateral charges" means additional charges to a consumer not directly attributed to a manufacturer's suggested retail price label for a new motor vehicle and includes all taxes, license, title and registration fees and other governmental charges related to the purchase of the vehicle;

B. "comparable motor vehicle" means an identical or reasonably equivalent motor vehicle;

C. "consumer" means the purchaser, other than for purposes of resale, of a new or used motor vehicle normally used for personal, family or household purposes, a person to whom such a motor vehicle has been transferred during the duration of an express warranty applicable to the motor vehicle and any other person entitled by the terms of the warranty to enforce the obligations of the warranty;

D. "express warranty" means a written affirmation of the fact of promise made by a manufacturer to a consumer in connection with the sale of a new or used motor vehicle that relates to the nature of the material or workmanship or to a specified level of performance over a specified period of time, including any terms or conditions precedent to the enforcement of obligations pursuant to the warranty;

E. "manufacturer" means a person engaged in the manufacturing, assembling, importing or distributing of a motor vehicle as a regular business;

F. "motor vehicle" means a passenger motor vehicle, including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes, that is sold and registered in this state and whose gross vehicle weight is less than ten thousand pounds;

G. "used motor vehicle" means a motor vehicle that has been sold, bargained or exchanged or a motor vehicle that is the subject of a title that has been transferred from the person who first acquired the motor vehicle from the manufacturer, importer or dealer or agent of the manufacturer or importer and that has been placed in bona fide consumer use; and

H. "used motor vehicle dealer" means a person or business that sells or offers for sale a used motor vehicle after selling or offering for sale four or more used motor vehicles in the previous twelve months but does not include:

(1) a bank or financial institution;

(2) an insurance company;

(3) a business selling a used motor vehicle to an employee of the business; or

(4) a lessor selling a leased vehicle to the lessee of the vehicle or to an employee of the lessee of the vehicle."

Section 2. A new section of the Motor Vehicle Quality Assurance Act is enacted to read:

"NOTICE OF REPLACEMENT OR REPURCHASE TO USED MOTOR VEHICLE DEALERS AND CONSUMERS.--A manufacturer, its agent, its authorized dealer or a used motor vehicle dealer that has been ordered by judgment or decree to replace or repurchase or that has replaced or repurchased a motor vehicle pursuant to the Motor Vehicle Quality Assurance Act shall, before offering the motor vehicle for resale, attach to the motor vehicle written notification indicating that the motor vehicle has been replaced or repurchased. A consumer or a used motor vehicle dealer may bring a cause of action against a person who removes the notification from the motor vehicle, unless the manufacturer, its agent or its authorized dealer or a used motor vehicle dealer, before completion of the sale, has provided the purchaser with written notification by the manufacturer, dealer or agent of the dealer, that the motor vehicle has been replaced or repurchased."

Section 3. A new section of the Motor Vehicle Quality Assurance Act is enacted to read:

"USED MOTOR VEHICLES.--

A. Unless a seller is a used motor vehicle dealer, before the seller attempts to sell a used motor vehicle, the seller shall possess the title to the used motor vehicle and the title shall be in the seller's name.

B. Except as otherwise provided in the Motor Vehicle Quality Assurance Act, a used motor vehicle dealer shall not exclude, modify or disclaim the implied warranty of merchantability prescribed in Section 55-2-314 NMSA 1978 or limit the remedies for a breach of the warranty before midnight of the fifteenth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven five hundred miles after delivery, whichever is earlier. In calculating time under this subsection, a day on which the warranty is breached and all subsequent days in which the used motor vehicle fails to conform with the implied warranty of merchantability are excluded. In calculating distance under this subsection, the miles driven to obtain or in connection with the repair, servicing or testing of the used motor vehicle that fails to conform with the implied warranty of merchantability are excluded. An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of the warranty in violation of this subsection renders a purchase agreement voidable at the option of the purchaser.

C. An implied warranty of merchantability is met if a used motor vehicle functions substantially free of a defect that significantly limits the use of the used motor vehicle for the ordinary purpose of transportation on any public highway. The implied warranty of merchantability expires at midnight of the fifteenth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven five hundred miles after delivery, whichever is earlier. In calculating time, a day on which the implied warranty of merchantability is breached is excluded and all subsequent days in which the used motor vehicle fails to conform with the warranty are also excluded. In calculating distance, the miles driven to obtain or in connection with the repair, servicing or testing of the used motor vehicle that fails to conform with the implied warranty of merchantability are excluded.

D. An implied warranty of merchantability does not extend to damage that occurs after the sale of the used motor vehicle that results from:

- (1) off-road use;
- (2) racing;
- (3) towing;
- (4) abuse;

(5) misuse;

(6) neglect;

(7) failure to perform regular maintenance; and

(8) failure to maintain adequate oil, coolant and other required fluids or lubricants.

E. If the implied warranty of merchantability described in this section is breached, the consumer shall give reasonable notice to the seller within thirty days of the date of the breach. Before the consumer exercises another remedy pursuant to Chapter 55, Article 2 NMSA 1978, the seller shall have a reasonable opportunity to repair the used motor vehicle. The consumer shall pay one-half of the cost of the first two repairs necessary to bring the used motor vehicle into compliance with the warranty. The payments by the consumer are limited to a maximum payment of twenty-five dollars (\$25.00) for each repair.

F. The maximum liability of a seller pursuant to this section is limited to the purchase price paid for the used motor vehicle, to be refunded to the consumer or lender, as applicable, in exchange for return of the vehicle, unless the seller knew or should have known of the defect given the circumstances in which the vehicle was acquired or sold and the seller did not disclose that defect.

G. An agreement for the sale of a used motor vehicle by a used motor vehicle dealer is voidable at the option of the consumer unless it contains on its face the following conspicuous statement printed in boldface, ten-point or larger type set off from the body of the agreement:

"New Mexico law requires that this vehicle will be fit for the ordinary purposes for which the vehicle is used for fifteen days or five hundred miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the consumer) will have to pay up to twenty-five dollars (\$25.00) for each of the first two repairs if the warranty is violated."

H. The inclusion in the agreement of the statement prescribed in Subsection G of this section does not create an express warranty.

I. A consumer of a used motor vehicle may waive the implied warranty of merchantability only for a particular defect in the vehicle and only if all of the following conditions are satisfied:

(1) the used motor vehicle dealer fully and accurately discloses to the consumer that because of circumstances unusual to the business of the used motor vehicle dealer, the used motor vehicle has a particular defect;

(2) the consumer agrees to buy the used motor vehicle after disclosure of the defect; and

(3) before the sale, the consumer indicates agreement to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in boldface ten-point or larger type and that is written in the language in which the presentation was made:

"Attention consumer: sign here only if the dealer has told you that this vehicle has the following problem(s) and you agree to buy the vehicle on those terms:

1. _____
2. _____
3. _____."

J. A used motor vehicle dealer has the burden to prove by a preponderance of the evidence that the dealer complied with Subsection I of this section.

K. A consumer or seller that is aggrieved by a transaction pursuant to this section and that seeks a legal remedy shall pursue an appropriate remedy prescribed in Chapter 55, Article 2 NMSA 1978 and shall comply with the requirements prescribed in that article."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2004.

HOUSE FLOOR SUBSTITUTE FOR

HOUSE BILL 225

CHAPTER 217

CHAPTER 217, LAWS 2003

AN ACT

RELATING TO COUNTIES; AMENDING THE SMALL COUNTIES ASSISTANCE ACT.

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

Section 1. Section 4-61-1 NMSA 1978 (being Laws 1982, Chapter 44, Section 1) is amended to read:

"4-61-1. SHORT TITLE.--Chapter 4, Article 61 NMSA 1978 may be cited as the "Small Counties Assistance Act"."

Section 2. Section 4-61-2 NMSA 1978 (being Laws 1982, Chapter 44, Section 2, as amended) is amended to read:

"4-61-2. DEFINITIONS.--As used in the Small Counties Assistance Act:

A. "ceiling valuation" means:

(1) for the 2002 property tax year, one billion four hundred million dollars (\$1,400,000,000); and

(2) for each subsequent property tax year, an amount equal to the product obtained by multiplying one billion four hundred million dollars (\$1,400,000,000) by a fraction, the numerator of which is the total valuation for the state for that property tax year and the denominator of which is the total valuation for the state for the 2002 property tax year;

B. "demographer" means the bureau of business and economic research at the university of New Mexico;

C. "population" means the official population shown by the most recent federal decennial census or, if there is a change in boundaries after the date of the census, "population" for each affected unit shall be the most current estimated population for that unit provided in writing by the demographer; provided that after five years from the first day of the calendar year of the most recent federal decennial census, that census shall not be used, and "population" for the period from that date until the date when the next following official final decennial census population data are available shall be the most current estimated population provided in writing by the demographer;

D. "qualifying county" means a class B, class C or first class county that has:

(1) for the property tax year in which any distribution under the Small Counties Assistance Act is made to the county, imposed a property tax rate for general county purposes pursuant to Paragraph (1) of Subsection B of Section 7-37-7 NMSA 1978 as limited by Section 7-37-7.1 NMSA 1978 of at least eight dollars eighty-five cents (\$8.85) per one thousand dollars (\$1,000) of net taxable value;

(2) by July 1 of the property tax year in which any distribution under the Small Counties Assistance Act is made to the county, received a written certification from the director of the property tax division of the taxation and revenue department that the county assessor of that county has implemented an acceptable program of maintaining current and correct property values for property taxation purposes as required by Section 7-36-16 NMSA 1978 or has submitted to the director an acceptable plan for the implementation of such a program;

(3) on July 1 of the year in which any distribution under the Small Counties Assistance Act is made to the county, a population of not more than forty-eight thousand;

(4) imposed all county gross receipts tax increments authorized pursuant to Section 7-20E-9 NMSA 1978 and has those increments in effect on July 1 of the year in which a distribution is made, provided that the county's valuation for property taxation purposes exceeds two hundred million dollars (\$200,000,000); and

(5) a total valuation for the property tax year preceding the year in which a distribution pursuant to the Small Counties Assistance Act for that county is to be made that is no greater than the ceiling valuation for that property tax year; and

E. "total valuation" means the sum for a jurisdiction for a property tax year of the net taxable value determined pursuant to the Property Tax Code, the assessed value determined pursuant to the Oil and Gas Ad Valorem Production Tax Act, the assessed value determined pursuant to the Oil and Gas Production Equipment Ad Valorem Tax Act and the taxable value determined pursuant to the Copper Production Ad Valorem Tax Act."

Section 3. Section 4-61-3 NMSA 1978 (being Laws 1982, Chapter 44, Section 3, as amended) is amended to read:

"4-61-3. SMALL COUNTIES ASSISTANCE FUND--DISTRIBUTION.--

A. The "small counties assistance fund" is created within the state treasury.

B. On or before September 1, 2003 and on or before September 1 of each subsequent year, the demographer shall certify in writing to the department of finance and administration the population of the state and of each county as of June 30 of the year.

C. On or before September 15, 2003 and on or before September 15 of each subsequent year, the secretary of finance and administration shall certify to the state treasurer with respect to each qualifying county:

(1) its population as certified by the demographer;

- (2) its total valuation for the preceding property tax year; and
- (3) the distribution amount calculated for it.

D. The distribution amount for each qualifying county shall be determined for 2003 and each subsequent year in accordance with the following table; provided that the bracket amounts in the first two columns of the table shall be adjusted annually after 2003 by the same fraction used to adjust the ceiling valuation pursuant to the provisions of Paragraph (2) of Subsection A of Section 4-61-2 NMSA 1978.

If the county's total valuation for the preceding property tax year is:

at least:	but less	and the county	then the
than:	population is:	distribution	
	amount is:		
\$0	\$100,000,000	under 4,000	\$250,000
\$0	\$100,000,000	over 4,000	\$225,000
\$100,000,000	\$210,000,000	under 12,000	\$150,000
\$100,000,000	\$210,000,000	over 12,000	\$100,000
\$210,000,000	\$1,400,000,000	under 48,000	\$ 45,000.

E. If the balance in the small counties assistance fund as of the preceding August 31 is less than the sum of the distributions to be made to qualifying counties, the department of finance and administration shall reduce each qualifying county's calculated distribution by a percentage computed by dividing the amount by which the fund is insufficient by the sum of all the calculated distributions and shall certify the reduced amounts as the qualifying counties' distributions.

F. Any interest accruing from the temporary investment of the small counties assistance fund shall be credited to the general fund.

G. On or before September 30, 2003 and on or before September 30 of each subsequent year, the state treasurer shall distribute to each county for whom a distribution has been certified for that year the amount certified for that county for that year. If the balance in the fund as of the preceding August 31 exceeds the amount to be distributed, the difference shall revert to the general fund.

H. If any date specified in Subsection B, C or G of this section falls on a Saturday or Sunday, any action required to be performed as provided in those subsections is timely if performed on the next day that is not a Saturday or Sunday."

HOUSE BILL 229, AS AMENDED

CHAPTER 218

CHAPTER 218, LAWS 2003

AN ACT

RELATING TO PUBLIC HEALTH EMERGENCIES; ENACTING THE PUBLIC HEALTH EMERGENCY RESPONSE ACT; PROVIDING PROCEDURES FOR DECLARING AND RESPONDING TO A PUBLIC HEALTH EMERGENCY; PROVIDING CIVIL PENALTIES; DECLARING AN EMERGENCY.

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

Section 1. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"SHORT TITLE.--This act may be cited as the "Public Health Emergency Response Act"."

Section 2. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"PURPOSES OF ACT.--The purposes of the Public Health Emergency Response Act are to:

A. provide the state of New Mexico with the ability to manage public health emergencies in a manner that protects civil rights and the liberties of individual persons;

B. prepare for a public health emergency; and

C. provide access to appropriate care, if needed, for an indefinite number of infected, exposed or endangered people in the event of a public health emergency."

Section 3. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"DEFINITIONS.--As used in the Public Health Emergency Response Act:

A. "attorney general" means the attorney general for the state of New Mexico;

B. "court" means the district court for the judicial district where a public health emergency is occurring, the district court for Santa Fe county or, in the event that a district court cannot adequately provide services, a district court designated by the New Mexico supreme court;

C. "director" means the director of homeland security;

D. "health care supplies" means medication, durable medical equipment, instruments, linens or any other material that the state of New Mexico may need to use in a public health emergency, including supplies for preparedness, mitigation and recovery;

E. "health facility" means:

(1) a facility licensed by the state of New Mexico pursuant to the provisions of the Public Health Act;

(2) a non-federal facility or building, whether public or private, for-profit or nonprofit, that is used, operated or designed to provide health services, medical treatment, nursing services, rehabilitative services or preventive care;

(3) a federal facility, when the appropriate federal entity provides its consent; or

(4) the following properties when they are used for, or in connection with, health-related activities:

(a) laboratories;

(b) research facilities;

(c) pharmacies;

(d) laundry facilities;

(e) health personnel training and lodging facilities;

(f) patient, guest and health personnel food service facilities;

and

(g) offices or office buildings used by persons engaged in health care professions or services;

F. "isolation" means the physical separation for possible medical care of persons who are infected or who are reasonably believed to be infected with a threatening communicable disease or potential threatening communicable disease from non-isolated persons, to protect against the transmission of the threatening communicable disease to non-isolated persons;

G. "public health emergency" means the occurrence or imminent threat of exposure to an extremely dangerous condition or a highly infectious or toxic agent, including a threatening communicable disease, that poses an imminent threat of substantial harm to the population of the state of New Mexico or any portion thereof;

H. "public health official" means the secretary of health or his designee, including a qualified public individual or group or a qualified private individual or group, as determined by the secretary of health;

I. "quarantine" means the precautionary physical separation of persons who have or may have been exposed to a threatening communicable disease or a potentially threatening communicable disease and who do not show signs or symptoms of a threatening communicable disease, from non-quarantined persons, to protect against the transmission of the disease to non-quarantined persons;

J. "secretary of health" means the secretary of health or his designee;

K. "secretary of public safety" means the secretary of public safety or his designee; and

L. "threatening communicable disease" means a disease that causes death or great bodily harm that passes from one person to another and for which there are no means by which the public can reasonably avoid the risk of contracting the disease. "Threatening communicable disease" does not include acquired immune deficiency syndrome or other infections caused by the human immunodeficiency virus."

Section 4. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"ENHANCED PUBLIC HEALTH ADVISORY.--

A. The governor, after consultation with the secretary of health, may issue an enhanced public health advisory if the governor has reasonable cause to believe that a public health emergency may occur.

B. The secretary of health may use powers and duties conferred under the Public Health Act to investigate the conditions leading to the issuance of the enhanced public health advisory.

C. The enhanced public health advisory shall be broadly disseminated in English, Spanish and other appropriate languages to the impacted population."

Section 5. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"DECLARING A STATE OF PUBLIC HEALTH EMERGENCY--TERMINATING THE EMERGENCY.--

A. A state of public health emergency may be declared by the governor upon the occurrence of a public health emergency. Prior to a declaration of a state of public health emergency, the governor shall consult with the secretary of health. The governor shall authorize the secretary of health, the secretary of public safety and the director to coordinate a response to the public health emergency.

B. A state of public health emergency shall be declared in an executive order that specifies:

(1) the nature of the public health emergency;

(2) the political subdivisions or geographic areas affected by the public health emergency;

(3) the conditions that caused the public health emergency;

(4) the expected duration of the public health emergency, if less than thirty days;

(5) the public health officials needed to assist in the coordination of a public health emergency response; and

(6) any other provisions necessary to implement the executive order.

C. A declaration of a state of public health emergency shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

D. A declaration of a state of public health emergency shall be terminated:

(1) by the governor, after consultation with the secretary of health, upon determining that there is no longer a public health emergency; or

(2) automatically after thirty days, unless renewed by the governor after consultation with the secretary of health.

E. Upon the termination of a state of public health emergency, the secretary of health shall consult with the secretary of public safety and the director to ensure public safety during termination procedures."

Section 6. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"SPECIAL POWERS DURING A PUBLIC HEALTH EMERGENCY.--

A. In order to protect the health, safety and welfare of the people in the state during a public health emergency, the secretary of health, in coordination with the secretary of public safety and the director, may:

(1) utilize, secure or evacuate health care facilities for public use;
and

(2) inspect, regulate or ration health care supplies as provided in Subsection B of this section.

B. If a public health emergency results in a statewide or regional shortage of health care supplies, the secretary of health may control, restrict and regulate the allocation, sale, dispensing or distribution of health care supplies.

C. The state medical investigator, after consultation with the secretary of health, the secretary of public safety, the director and the chairman of the board of thanatopractice, may implement and enforce measures to provide for the safe disposal of human remains that may be reasonable and necessary to respond to a public health emergency. The measures may include special provisions for embalming, burial, cremation, interment, disinterment, transportation and disposal of human remains. To the extent possible, the religious, cultural, family and individual beliefs of a deceased person or of the family of a deceased person shall be considered when disposing of human remains."

Section 7. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"PROCEDURES FOR ISOLATION OR QUARANTINE OF PERSONS.--

A. Except as provided in Section 9 of the Public Health Emergency Response Act, before isolating or quarantining a person during a declared public health emergency, the secretary of health shall apply for and obtain a written, ex parte order from a court that authorizes the isolation or quarantine. Notice of the application for the

ex parte order shall be given, unless it clearly appears from specific facts shown that immediate and irreparable injury, loss or damage will result before an affected person can be heard in opposition to the application. The evidence or testimony in support of the application may be presented or taken by telephone, facsimile transmission, video equipment or other method of electronic communication. The court shall grant the application for an ex parte order upon finding that clear and convincing evidence exists to believe isolation or quarantine is warranted to respond to the public health emergency.

B. The ex parte order shall:

- (1) state the specific facts justifying isolation or quarantine;
- (2) state the persons, group or class of persons affected by the ex parte order;
- (3) state that the persons being isolated or quarantined have a right to a court hearing under the Public Health Emergency Response Act and a right to be represented by counsel at the hearing; and
- (4) be served as soon as practicable to persons isolated or quarantined.

C. The secretary of health shall coordinate with the secretary of public safety and the director regarding execution of the ex parte order. The ex parte order shall be posted in a public and accessible place. If individual notice is not feasible, the secretary of health, the secretary of public safety and the director shall use the best means available to ensure that a person subject to the ex parte order is informed of the order and his rights.

D. A person who is isolated or quarantined may request a court hearing pursuant to Section 10 of the Public Health Emergency Response Act at any time before the expiration of the ex parte order. A person shall not be isolated or quarantined pursuant to an ex parte order for longer than five days without a court hearing to determine whether isolation or quarantine should continue.

E. The isolation or quarantine of a person shall terminate automatically on the expiration date of a court order authorizing isolation or quarantine, or before the expiration date of the court order, upon notice to the court, if the secretary of health determines that isolation or quarantine is no longer necessary to protect the public."

Section 8. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"ISOLATION OR QUARANTINE AUTHORIZED--PROTECTION OF A PERSON ISOLATED OR QUARANTINED.--

A. The secretary of health may isolate or quarantine a person as necessary during a public health emergency, using the procedures set forth in the Public Health Emergency Response Act.

B. The secretary of health, the secretary of public safety, the director and anyone acting under the secretaries' or the director's authority, when isolating or quarantining a person during a public health emergency, shall ensure that:

(1) isolation or quarantine shall be by the least restrictive means necessary to protect against the spread of a threatening communicable disease or a potentially threatening communicable disease to others and may include confinement to a private home or other private or public premises;

(2) isolated persons are confined separately from quarantined persons;

(3) the health status of an isolated or quarantined person is monitored regularly to determine if he requires continued isolation or quarantine. To adequately address emergency health situations, an isolated or quarantined person shall be given a reliable means to communicate twenty-four hours a day with health officials and to summon emergency health services;

(4) if a quarantined person subsequently becomes infected or is reasonably believed to be infected with a threatening communicable disease or a potentially threatening communicable disease, he shall be isolated pursuant to the provisions of the Public Health Act or the Public Health Emergency Response Act;

(5) the needs of a person isolated or quarantined be addressed in a systematic and orderly manner, including the provision of adequate food, clothing, shelter, sanitation, and to the extent of available resources, appropriate medication and treatment, medical care and mental health care;

(6) there are methods of communication available to a person placed in isolation or quarantine so that he may communicate with others, including family members, household members, legal representatives, advocates and the media. Accommodations shall also be made for religious worship or practice and updates on the status of the public health emergency, as available;

(7) the premises used for isolation or quarantine are maintained in a safe and hygienic manner and are designed to minimize the likelihood of further transmission of infection or other injury to other persons who are isolated or quarantined; and

(8) to the extent feasible, forms are provided to a person in isolation or quarantine that document the person's consent or objection to the isolation or quarantine.

C. A person isolated or quarantined pursuant to the provisions of the Public Health Emergency Response Act has the right to refuse medical treatment, testing, physical or mental examination, vaccination, specimen collections and preventive treatment programs. A person who has been directed by the secretary of health to submit to medical procedures and protocols because the person is infected with, reasonably believed to be infected with, or exposed to a threatening communicable disease and who refuses to submit to the procedures and protocols may be subject to continued isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act.

D. A person not authorized by the secretary of public safety, the secretary of health or the director shall not enter an isolation or quarantine area. If, by reason of an unauthorized entry into an isolation or quarantine area, a person poses a danger to public health, the person may be subject to isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act.

E. A household or family member of a person isolated or quarantined has a right to choose to enter an isolation or quarantine area. The secretary of public safety, the secretary of health or the director shall permit the household or family member entry into the isolation or quarantine area if the household or family member signs a consent form stating that the member has been informed of the potential health risks, isolation and quarantine guidelines and the consequences of entering the area. The household or family member shall not hold the state of New Mexico responsible for any consequences by reason of entry into the isolation or quarantine area. A household or family member who enters the area, at the discretion of the public health official, may be subject to isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act."

Section 9. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"TEMPORARY HOLD UPON SECRETARY'S ORDER.--

A. If the secretary of health makes a finding that a delay in isolating or quarantining a person will significantly jeopardize the secretary's ability to prevent or limit the transmission of a threatening communicable disease, then the secretary of health may, by public health order, isolate or quarantine a person without first obtaining a written, ex parte order from a court.

B. Following the imposition of isolation or quarantine pursuant to Subsection A of this section, the secretary of health, within twenty-four hours of the imposition, shall apply for an ex parte order that authorizes the isolation or quarantine and shall follow the procedures and meet the standards set forth in Sections 7, 8 and 10 of the Public Health Emergency Response Act.

C. In a subsequent application to a court, the secretary of health shall present facts in support of the need to issue a temporary hold before obtaining the ex parte order from the court that authorizes the isolation or quarantine."

Section 10. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"COURT HEARING TO CONTEST ISOLATION OR QUARANTINE.--

A. A person who is isolated or quarantined under a temporary hold, ex parte order or court order may petition the court to contest the temporary hold, ex parte order or court order at any time prior to the expiration of the temporary hold, ex parte order or court order. If a petition is filed, the court shall hold a hearing within three business days after the date of the filing. The filing of a petition for a hearing does not stay an order of isolation or quarantine. At the hearing, the secretary of health shall offer clear and convincing evidence that the isolation or quarantine is warranted to respond to a public health emergency.

B. If the secretary of health wishes to extend an order for isolation or quarantine past the period of time stated in the temporary hold, ex parte order or court order, the secretary of health shall petition the court for an extension. Notice of the hearing shall be served to every person who is isolated or quarantined at least three days prior to the hearing. If it is not feasible to provide individual notice to every person isolated or quarantined, a copy of the notice shall be posted in a public and accessible place, using the best means available to ensure that every person subject to the order is informed of the order and their rights.

C. The hearing notice shall contain:

- (1) the date, time and place of the hearing;
- (2) the grounds upon which continued isolation or quarantine is sought;
- (3) the person's right to appear at the hearing; and
- (4) the person's right to counsel, including the right, if indigent, to be represented by counsel designated by the court.

D. The court may order an extension of the isolation or quarantine if it finds, by clear and convincing evidence, that there is an imminent health threat to others if the isolation or quarantine is terminated.

E. In no case shall the isolation or quarantine continue longer than thirty days from the date of a court order, unless the secretary of health petitions the court for an extension pursuant to the standards and procedures set forth in this section.

F. Upon notice to a court by the secretary of health that the conditions warranting isolation or quarantine no longer exist, the court shall issue an order terminating the isolation or quarantine."

Section 11. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"HEARING ON CONDITIONS OF ISOLATION AND QUARANTINE.--

A. A person who is isolated or quarantined may request a hearing in court, as provided in Section 10 of the Public Health Emergency Response Act, for remedies regarding treatment or the terms and condition of the isolation or quarantine.

B. Upon receiving a request for a hearing pursuant to this section, the court shall fix a date for a hearing within seven days of the court's receipt of the request.

C. A request for a hearing does not alter an order for isolation or quarantine. If the court finds that the isolation or quarantine of a person is not in compliance with the provisions of the Public Health Emergency Response Act, the court may fashion remedies appropriate to the circumstances of the public health emergency."

Section 12. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"MEDICAL EXAMINATION AND TESTING.--

A. During a state of public health emergency, medical examinations or tests may be performed by a qualified person authorized by the secretary of health to provide medical examinations or tests.

B. The secretary of health may isolate or quarantine a person whose refusal of medical examination or testing results in uncertainty regarding whether the person has been exposed to or is infected with a threatening communicable disease or otherwise reasonably poses a danger to public health."

Section 13. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"VACCINATION AND TREATMENT.--

A. During a state of public health emergency, a qualified person authorized by the secretary of health may vaccinate persons to prevent infection by a threatening communicable disease and to protect against the spread of that disease.

B. To protect against the spread of a threatening communicable disease, the secretary of health may isolate or quarantine a person who is unable or unwilling for reasons of health, religion or conscience to undergo vaccination pursuant to the standards and procedures set forth in the Public Health Emergency Response Act.

C. A qualified person authorized by the secretary of health may vaccinate a minor less than eighteen years of age, unless the minor or his duly authorized representative presents a certificate issued by a duly licensed physician that states that the minor's physical condition is such that the vaccination would seriously endanger his life or health.

D. During a state of public health emergency, in order to provide treatment to a person who is exposed to or infected with a threatening communicable disease:

(1) treatment may be administered by a public health official;

(2) treatment shall be approved pursuant to appropriate regulations promulgated by the federal food and drug administration; and

(3) the secretary of health may isolate or quarantine a person who is unable or unwilling, for reasons of health, religion or conscience, to undergo treatment pursuant to the standards and procedures set forth in the Public Health Emergency Response Act."

Section 14. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"IMMUNITY.--During a state of public health emergency, the state, its political subdivisions, the governor, the secretary of health, the secretary of public safety, the director or any other state or local officials or personnel who assist during the public health emergency are liable for the death of a person, injury to a person or damage to property, only to the extent permitted in the Tort Claims Act, as a result of complying with the provisions of the Public Health Emergency Response Act or a rule adopted pursuant to that act."

Section 15. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"COMPENSATION.--

A. The state shall pay just compensation to the owner of health care supplies, a health facility or any other property that is lawfully taken or appropriated by the secretary of health, the secretary of public safety or the director for temporary or permanent use during a public health emergency. The amount of compensation due shall be calculated in the same manner as compensation due for taking of property

pursuant to nonemergency eminent domain procedures, as provided by the Eminent Domain Code; provided that the amount of compensation calculated shall include lost revenues and expenses incurred due to the taking or appropriating of property, including a health facility.

B. The attorney general shall make a preliminary determination of whether or not compensation is due to an owner of health care supplies, a health facility or any other property. The owner may appeal the preliminary determination pursuant to rules promulgated by the attorney general. The rules shall include the owner's right to speak at the appeal and the owner's right to present facts pertinent to the appeal to a hearing officer appointed by the attorney general. A record shall be made of the hearing. The hearing officer shall preside over and take evidence at a hearing held pursuant to this section. The hearing officer shall prepare and submit to the attorney general a summary of the evidence taken at the hearing. The hearing officer shall also submit proposed findings of fact to the attorney general. The attorney general shall render a decision that sets forth the amount of compensation, if any, due to the owner. The attorney general's decision shall include findings of fact and conclusions of law.

C. A decision made by the attorney general pursuant to this section shall be subject to an appeal to the district court, pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

D. To the extent practicable and consistent with protection of public health, the attorney general, prior to the taking or appropriating of property, shall institute civil proceedings against the property to be taken or appropriated in accordance with the Eminent Domain Code, other applicable laws, court rules or rules the courts may develop during a state of public health emergency."

Section 16. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"JOB PROTECTION FOR A PERSON WHO IS ISOLATED OR QUARANTINED.--An employer or an agent of an employer shall not discharge from employment a person who is placed in isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act."

Section 17. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"RULEMAKING.--The secretary of public safety, the secretary of health and, where appropriate, other affected state agencies in consultation with the secretary of health and the secretary of public safety, shall promulgate and implement rules that are reasonable and necessary to implement and effectuate the Public Health Emergency Response Act."

Section 18. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"MEMORANDUM OF UNDERSTANDING--INDIAN PUEBLOS OR TRIBAL ENTITIES.--The secretary of public safety, the secretary of health, the director and, when appropriate, other state agencies in consultation with the secretary of health and the secretary of public safety, may enter into a memorandum of understanding with an Indian pueblo or tribal entity within the state of New Mexico in order to effectuate the purposes, procedures and standards set forth in the Public Health Emergency Response Act."

Section 19. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"ENFORCEMENT--CIVIL PENALTIES.--

A. The secretary of health, the secretary of public safety or the director may enforce the provisions of the Public Health Emergency Response Act by imposing a civil administrative penalty of up to five thousand dollars (\$5,000) for each violation of that act. A civil administrative penalty may be imposed pursuant to a written order issued by the secretary of health, the secretary of public safety or the director after a hearing is held in accordance with the rules promulgated pursuant to the provisions of Section 16 of the Public Health Emergency Response Act.

B. The provisions of the Public Health Emergency Response Act shall not be construed to limit specific enforcement powers enumerated in that act.

C. The enforcement authority provided pursuant to the provisions of the Public Health Emergency Response Act is in addition to other remedies available against the same conduct under the common law or other statutes of this state."

Section 20. SEVERABILITY.--If any part or application of the Public Health Emergency Response Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 21. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 231, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 6, 2003

CHAPTER 219

CHAPTER 219, LAWS 2003

AN ACT

RELATING TO COUNTIES; ESTABLISHING A RATE OF REIMBURSEMENT TO COUNTIES FOR EXPENSES INCURRED WHEN COUNTIES EXTRADITE, TRANSPORT AND FEED STATE PRISONERS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 4-44-18 NMSA 1978 (being Laws 1961, Chapter 253, Section 4, as amended) is amended to read:

"4-44-18. SHERIFFS, DEPUTY SHERIFFS AND GUARDS--EXPENSES INCURRED IN SERVING PROCESS AND CERTAIN OTHER OFFICIAL BUSINESS--PER DIEM.--

A. Sheriffs, their deputies and guards shall be paid per diem expenses at the rate authorized in the Per Diem and Mileage Act by the counties on behalf of which expenses are incurred in:

(1) service of criminal process issued out of the supreme court or district court;

(2) service of criminal process issued out of a magistrate court when the issuance is approved in writing by the district attorney or his assistants;

(3) service of civil process issued by the district court; and

(4) attempting to discover or arrest a person charged with a felony if written authorization is obtained from the district judge.

B. Expenses authorized pursuant to this section shall be paid on the rendition of sworn accounts filed in the county clerk's office and approved by the board of county commissioners and the district judge.

C. Sheriffs, their deputies and guards shall be paid per diem and mileage expenses at the rate authorized in the Per Diem and Mileage Act for extraditing prisoners from without the state and for transporting persons committed by a court to a state institution or required to be returned by order of the court from a state institution to

the county of commitment. Subject to appropriation by the legislature, the county shall be reimbursed by the state for the per diem, costs for mileage and other necessary travel expenses incurred pursuant to this subsection by submitting claims for reimbursement to the department of finance and administration in accordance with the department's regulations. Notwithstanding the provisions of this subsection, a single county shall not receive more than fifty percent of the total amount of money allocated to all counties as reimbursement."

Section 2. Section 4-44-20 NMSA 1978 (being Laws 1961, Chapter 253, Section 8, as amended) is amended to read:

"4-44-20. PRISONERS--FEEDING IN TRANSIT.--

A. The county sheriffs shall be reimbursed for the actual expense incurred for the care and feeding of prisoners in transit. Reimbursement shall not be made pursuant to this section without proof of actual expenses incurred by a sheriff or his delegate. The reimbursement for any prisoner shall not exceed the rate set by the Per Diem and Mileage Act.

B. Subject to appropriation by the legislature, a county shall be reimbursed by the state for the actual expenses incurred for the care and feeding of prisoners in transit. Notwithstanding the provisions of this subsection, a single county shall not receive more than fifty percent of the total amount of money allocated to all counties as reimbursement."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 308, AS AMENDED

CHAPTER 220

CHAPTER 220, LAWS 2003

AN ACT

RELATING TO MUNICIPALITIES; AMENDING THE SMALL CITIES ASSISTANCE ACT.

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

Section 1. Section 3-37A-1 NMSA 1978 (being Laws 1979, Chapter 284, Section 1) is amended to read:

"3-37A-1. SHORT TITLE.--Chapter 3, Article 37A NMSA 1978 may be cited as the "Small Cities Assistance Act"."

Section 2. Section 3-37A-2 NMSA 1978 (being Laws 1979, Chapter 284, Section 2, as amended) is amended to read:

"3-37A-2. DEFINITIONS.--As used in the Small Cities Assistance Act:

A. "municipality" means an incorporated city, town or village, whether incorporated under general act, special act or special charter, and incorporated counties and H-class counties;

B. "municipal share" means one and thirty-five one-hundredths percent of the taxable gross receipts as defined in the Gross Receipts and Compensating Tax Act reported annually for each municipality to the taxation and revenue department during a twelve-month period ending June 30;

C. "total municipal share" means the sum of all municipal shares;

D. "statewide per capita average" means the quotient of the total municipal share divided by the total population in all municipalities;

E. "municipal per capita average" means the quotient of the municipal share divided by the municipality's population;

F. "population" means the most recent official census or estimate determined by the bureau of the census or, if neither is available, "population" means an estimate as determined by the local government division of the department of finance and administration;

G. "local tax effort" means the amount produced by a one-fourth of one percent municipal gross receipts tax in the previous fiscal year;

H. "qualifying municipality" means a municipality with a population of less than ten thousand that has enacted on or before the last day of the preceding fiscal year an ordinance or ordinances imposing a municipal gross receipts tax pursuant to Section 7-19D-9 NMSA 1978 at a rate of one-fourth of one percent or more;

I. "enacted" means adopted by a majority of the members of the governing body of the municipality pursuant to Section 7-19D-9 NMSA 1978 and:

(1) for which no election has been called in the manner and within the time provided by Section 7-19D-9 NMSA 1978; or

(2) that has been approved by a majority of the registered voters voting on the question pursuant to Section 7-19D-9 NMSA 1978; and

J. "minimum amount" means an amount equal to thirty-five thousand dollars (\$35,000)."

Section 3. Section 3-37A-3 NMSA 1978 (being Laws 1979, Chapter 284, Section 3, as amended) is amended to read:

"3-37A-3. SMALL CITIES ASSISTANCE FUND--DISTRIBUTION.--

A. The "small cities assistance fund" is created within the state treasury.

B. On or before January 31, 2004 and on or before January 31 of each subsequent year, the local government division of the department of finance and administration shall certify to the taxation and revenue department the population of each municipality in the state.

C. On or before the last day of February of 2004 and of each subsequent year, the taxation and revenue department shall compute the amount to be distributed to each qualifying municipality as follows; provided that the maximum amount to be distributed to a qualifying municipality shall not exceed fifty-six thousand dollars (\$56,000).

(1) The department first shall compute a distribution share for each qualifying municipality. The distribution share shall be an amount equal to the product of the qualifying municipality's population multiplied by the difference between the statewide per capita average and the municipal per capita average less the local tax effort of the qualifying municipality.

(2) In 2004 and subsequent years, the balance in the small cities assistance fund in February immediately after the distribution to the fund pursuant to Section 7-1-6.2 NMSA 1978 for the preceding January will be divided by the number of qualifying municipalities. The quotient will be rounded down to the nearest dollar and may be cited as the "target amount".

(3) If the target amount determined in Paragraph (2) of this subsection is less than or equal to the minimum amount, the target amount is the amount to be distributed to each qualifying municipality.

(4) If the target amount exceeds the minimum amount, the amount to be distributed to all qualifying municipalities whose distribution share equals or is less than the minimum amount shall equal the minimum amount. The sum to be distributed to such municipalities shall be subtracted from the amount in the fund. The target amount then shall be increased by dividing the balance remaining in the fund by the number of remaining qualifying municipalities. The amount to be distributed to each remaining qualifying municipality shall equal the lesser of the municipality's distribution share or the increased target amount. If the distribution share of one or more of these remaining qualifying municipalities is less than the increased target amount, the balance

of the fund is to be further reduced by the amount necessary to provide for a distribution to those municipalities of their distribution shares. The target amount is to be increased again by dividing the recomputed fund balance by the number of qualifying municipalities not yet provided for. Successive iterations of the process to increase the target amount shall occur until no remaining municipality's distribution share is less than the increased target amount.

D. The state treasurer shall distribute from the small cities assistance fund on or before March 1, 2004 and March 1 of each subsequent year to each qualifying municipality the amount certified by the taxation and revenue department for each qualifying municipality for the year.

E. Immediately after distribution to municipalities from the small cities assistance fund but no later than June 30 of each year, the unexpended or unencumbered balance in the small cities assistance fund remaining after the distribution to the qualifying municipalities shall revert to the general fund.

F. Funds distributed in accordance with this section shall be placed in the general fund of the qualifying municipalities receiving distributions."

Section 4. TEMPORARY PROVISION.--The distribution to municipalities pursuant to Section 3-37A-3 NMSA 1978 for 2003 shall be made in accordance with the provisions of Section 3-37A-3 NMSA 1978 in effect immediately prior to the effective date of this act; provided, however, that the reversion to the general fund for fiscal year 2003 shall be limited as follows:

A. if the distribution is made on or before March 1, 2003, the reversion shall not exceed the amount remaining in the small cities assistance fund after the distribution for fiscal year 2003; or

B. if the distribution is made after March 1, 2003, the reversion shall not exceed an amount equal to the amount remaining in the small cities assistance fund as of February 28, 2003 less the amount distributed.

HOUSE BILL 322, AS AMENDED

CHAPTER 221

CHAPTER 221, LAWS 2003

AN ACT

RELATING TO INDUSTRIAL REVENUE BONDS; PROVIDING CERTAIN NOTIFICATION REQUIREMENTS PRIOR TO ISSUANCE; ALLOWING CERTAIN COUNTIES TO ISSUE INDUSTRIAL REVENUE BONDS ANYWHERE WITHIN THE COUNTY; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 3-32-6.1 NMSA 1978 (being Laws 1997, Chapter 216, Section 2 and also Laws 1997, Chapter 226, Section 2) is amended to read:

"3-32-6.1. NOTICE TO COUNTY.--

A. Prior to adopting an ordinance issuing industrial revenue bonds, the municipality shall give notice to the board of county commissioners and the county assessor of its intent to consider the matter. The board and the county assessor 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 to the municipality.

B. The board of county commissioners and the county assessor shall be able to forward their comments and any concerns to the city council, but there is no approval required from the board or the county assessor and they do 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.

D. The municipality shall notify the board of county commissioners and the county assessor when an industrial revenue bond has matured, expired or been replaced by a refunding bond."

Section 2. Section 4-59-2 NMSA 1978 (being Laws 1975, Chapter 286, Section 2, as amended by Laws 2002, Chapter 25, Section 4 and by Laws 2002, Chapter 37, Section 4) is amended to read:

"4-59-2. DEFINITIONS.--As used in the County Industrial Revenue Bond Act, unless the context clearly indicates otherwise:

A. "commission" means the governing body of a county;

B. "county" means a county organized or incorporated in New Mexico;

C. "501(c)(3) corporation" means a corporation that demonstrates to the taxation and revenue department that it has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered;

D. "health care service" means the diagnosis or treatment of sick or injured persons or medical research and includes the ownership, operation, maintenance, leasing and disposition of health care facilities, such as hospitals, clinics, laboratories, x-ray centers and pharmacies;

E. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

F. "project" means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state to be relocated within a county but, except as provided in Paragraph (1) of Subsection A of Section 4-59-4 NMSA 1978, not within the boundaries of any incorporated municipality in the state, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:

(1) an industry for the manufacturing, processing or assembling of agricultural or manufactured products;

(2) a commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry, but does not include a facility designed for the sale or distribution to the public of electricity, gas, telephone or other services commonly classified as public utilities, except for:

(a) water utilities; and

(b) any electric generation facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999;

(3) a business in which all or part of the activities of the business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer;

(4) a nonprofit corporation engaged in health care services;

(5) a mass transit or other transportation activity involving the movement of passengers, an industrial park, an office headquarters and a research facility;

(6) a water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment; and

(7) a 501(c)(3) corporation; and

G. "property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project."

Section 3. 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 that 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; provided, however, that:

(1) a class A county with a population of more than three hundred thousand may acquire projects located anywhere in the county; and

(2) a county shall not acquire any electricity generation facility project unless the acquisition is approved by the local school board of the school district in which a project is located and the board of county commissioners, the local school board and the person proposing the project negotiate and determine the amount of an annual in-lieu tax payment to be made to the school district by the person proposing the project, for the period that the county owns and leases the project, and provided such approval shall not be unreasonably withheld;

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."

Section 4. Section 4-59-4.1 NMSA 1978 (being Laws 1997, Chapter 216, Section 4 and also Laws 1997, Chapter 226, Section 4) is amended to read:

"4-59-4.1. NOTICE TO MUNICIPALITY AND COUNTY

ASSESSOR.--

A. Prior to adopting an ordinance issuing county industrial revenue bonds, a county shall give notice to the county assessor and the largest municipality located within the county of its intent to consider the matter. The county assessor and 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 to the county.

B. The county assessor and the municipality shall be able to forward their comments and any concerns to the board of county commissioners, but there is no approval required from the municipality or the county assessor and they do 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.

D. The county shall notify the board of county commissioners and the county assessor when an industrial revenue bond has matured, expired or been replaced by a refunding bond."

HOUSE BILL 419, AS AMENDED

CHAPTER 222

CHAPTER 222, LAWS 2003

AN ACT

RELATING TO THE PROCUREMENT CODE; INCREASING QUALIFYING THRESHOLDS FOR CERTAIN DESIGN AND BUILD PROJECT DELIVERY SYSTEMS FROM THOSE COSTING LESS THAN TWO HUNDRED THOUSAND DOLLARS (\$200,000) TO FOUR HUNDRED THOUSAND DOLLARS (\$400,000).

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

Section 1. Section 13-1-119.1 NMSA 1978 (being Laws 1997, Chapter 171, Section 5, as amended) is amended 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, 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. Except as provided in Subsections F and G of this section, 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. Except as provided in Subsections F and G of this section, 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 rules 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.

F. The requirements of Subsections C and D of this section and the minimum construction cost requirement of Subsection A of this section do not apply to a design and build project delivery system and the services procured for the project if:

(1) the maximum allowable construction cost of the project is four hundred thousand dollars (\$400,000) or less; and

(2) the only requirement for architects, engineers, landscape architects or surveyors is limited to either site improvements or adaption for a pre-engineered building or system.

G. The procurement of a design and build project delivery system qualifying for exemptions pursuant to Subsection F of this section, including the services of any architect, engineer, landscape architect, construction manager or surveyor needed for the project, shall be accomplished by competitive sealed bids pursuant to Sections 13-1-102 through 13-1-110 NMSA 1978."

HOUSE BILL 428, AS AMENDED

CHAPTER 223

CHAPTER 223, LAWS 2003

AN ACT

RELATING TO THE LEGISLATURE; ABOLISHING CERTAIN INTERIM COMMITTEES AND TASK FORCES; AUTHORIZING DESIGNEES ON THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE.

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

Section 1. Section 2-16-2 NMSA 1978 (being Laws 1994, Chapter 90, Section 2) is amended to read:

"2-16-2. MEMBERSHIP--APPOINTMENT--VACANCIES.--

A. The revenue stabilization and tax policy committee shall be composed of eighteen members. Nine members of the house of representatives shall be appointed by the speaker of the house of representatives and nine members of the senate shall be appointed by the committees' committee of the senate or, if the senate appointments are made in the interim, by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee.

B. Members shall be appointed from each house so as to give the two major political parties in each house the same proportional representation on the committee as prevails in each house; however, in no event shall either party have less than one member from each house on the committee. Vacancies on the committee shall be filled by appointment in the same manner as the original appointments. If a regular member is going to be absent from a committee meeting, the regular member may designate a legislator from the same house and party to serve in the regular member's place at the meeting if the member notifies the chairman of the committee of the anticipated absence and notifies the designee at least twenty-four hours before the committee meeting. The regular member shall select the designee from a list of potential designees appointed by the appointing authority for each house. The list shall be maintained in the offices of the legislative council service. The chairman and vice chairman of the committee shall be designated by the New Mexico legislative council.

C. No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects such action."

Section 2. Section 58-24-8 NMSA 1978 (being Laws 1983, Chapter 300, Section 8) is amended to read:

"58-24-8. RULES AND REGULATIONS OF THE BOARD.--

A. Subject to prior review by an interim committee designated by the New Mexico legislative council, the board shall adopt and may from time to time modify or repeal rules and regulations:

(1) for determining criteria for the classification and setting of priorities of commercial or agricultural industries in need of development, improvement or rehabilitation, which criteria may vary between different areas in the state and in accordance with the possible employment benefits; and

(2) for governing:

(a) the making of project loans;

(b) the making of lender loans; and

(c) the purchase of project loans, to implement the powers authorized and to achieve the purposes set forth in the Industrial and Agricultural Finance Authority Act.

B. The rules and regulations of the board relating to the making of lender or project loans or the purchase of project loans shall provide at least for the following:

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

(a) requests for loans; and

(b) offers to sell loans;

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

(3) qualifications or characteristics of:

(a) commercial, industrial or agricultural facilities; and

(b) the sponsors or owners thereof; and

(4) requirements as to commitments and disbursements by lenders with respect to project loans."

Section 3. REPEAL.--Sections 2-12-1 through 2-12-4, 2-12-6 through 2-12-10, 29-9-12 through 29-9-16, 29-9-18 and 52-7-1 through 52-7-6 NMSA 1978 (being Laws 1983, Chapter 300, Sections 24 through 26, Laws 1987, Chapter 254, Section 11, Laws 1993, Chapter 65, Sections 15 through 19, Laws 1975, Chapter 230, Sections 1 through 5, Laws 1981, Chapter 234, Section 1 and Laws 1990 (2nd S.S.), Chapter 2, Sections 83 through 88) are repealed.

HOUSE FLOOR SUBSTITUTE FOR

HOUSE BILL 442

CHAPTER 224

CHAPTER 224, LAWS 2003

AN ACT

RELATING TO AVIATION; CHANGING FEE AND REGISTRATION REQUIREMENTS PURSUANT TO THE AIRCRAFT REGISTRATION ACT; CHANGING DISTRIBUTION OF FEES.

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

Section 1. Section 64-4-4 NMSA 1978 (being Laws 1965, Chapter 122, Section 4, as amended) is amended to read:

"64-4-4. AIRCRAFT REGISTRATION.--

A. All aircraft based or hangared within this state shall be registered annually with the division, and a registration fee shall be paid as approved in the Aircraft Registration Act.

B. Aircraft that are within the state for maintenance, overhaul, storage or repair, but that are habitually or permanently based in another state, may be registered pursuant to the provisions of the Aircraft Registration Act."

Section 2. Section 64-4-11 NMSA 1978 (being Laws 1978, Chapter 43, Section 1) is amended to read:

"64-4-11. REGISTRATION FEES.--

A. The division shall collect the following registration fees:

(1) when the model of the aircraft is one year or less old immediately prior to the year for which it is being registered, two cents (\$.02) a pound of manufacturer's maximum gross weight;

(2) when the model of the aircraft is two years old immediately prior to the year for which it is being registered, one and three-fourths cents (\$.0175) a pound of manufacturer's maximum gross weight;

(3) when the model of the aircraft is three years old immediately prior to the year for which it is being registered, one and one-half cents (\$.0150) a pound of manufacturer's maximum gross weight;

(4) when the model of the aircraft is four years old immediately prior to the year for which it is being registered, one and one-fourth cents (\$.0125) a pound of manufacturer's maximum gross weight;

(5) when the model of the aircraft is five years or more old immediately prior to the year for which it is being registered, one cent (\$.01) a pound of manufacturer's maximum gross weight;

(6) surplus military aircraft over five years old from date of manufacture, one cent (\$.01) a pound of military placarded or certificated gross weight; and

(7) hot air balloons, a flat fee of ten dollars (\$10.00) regardless of the age and weight of aircraft.

B. The fees charged in Subsection A of this section shall not exceed three hundred dollars (\$300) per engine regardless of the weight or age of the aircraft.

C. The fees set by this section are in lieu of all personal property taxes on aircraft authorized by any law of this state. Registration certificates for part of the year issued after July 1 shall be issued at the rate of fifty percent of the annual fee."

Section 3. Section 64-4-14 NMSA 1978 (being Laws 1965, Chapter 122, Section 14, as amended) is amended to read:

"64-4-14. DISPOSITION OF FEES.--

A. Except as provided in Subsection B of this section, all fees collected under the provisions of the Aircraft Registration Act shall be remitted to the state treasurer by the division for credit to the state aviation fund.

B. Eighty percent of registration fees collected with respect to aircraft registered pursuant to Subsection B of Section 64-4-4 NMSA 1978 and that are located on airports owned by a local government shall be distributed to the local government. The fees so distributed shall be used by the local government for airport upgrades, including repair, reconstruction and maintenance of runways and related facilities. Local government funding to the airport shall not be replaced in whole or in part by this distribution."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 458, AS AMENDED

CHAPTER 225

CHAPTER 225, LAWS 2003

AN ACT

RELATING TO JUVENILE JUSTICE; AMENDING PROVISIONS OF THE CHILDREN'S CODE REGARDING PLACEMENT OF CHILDREN, APPELLATE PROCEDURES, DETENTION PROCEEDINGS AND PAROLE PROCEDURES.

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

Section 1. Section 32A-1-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 13, as amended) is amended to read:

"32A-1-4. DEFINITIONS.--As used in the Children's Code:

- A. "adult" means a person who is eighteen years of age or older;
- B. "child" means a person who is less than eighteen years old;
- C. "court", when used without further qualification, means the children's court division of the district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule;
- D. "court appointed special advocate" or "CASA" means a person appointed as a CASA, pursuant to the provisions of the Children's Court Rules, who assists the court in determining the best interests of the child by investigating the case and submitting a report to the court;
- E. "custodian" means a person, other than a parent or guardian, who exercises physical control, care or custody of the child, including an employee of a residential facility or a person providing out-of-home care;
- F. "department" means the children, youth and families department, unless otherwise specified;
- G. "foster parent" means a person, including a relative of the child, licensed or certified by the department or a child placement agency to provide care for children in the custody of the department or agency;

H. "guardian" means the person having the duty and authority of guardianship;

I. "guardianship" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of a child and to be concerned about the child's general welfare and includes:

(1) the authority to consent to marriage, to enlistment in the armed forces of the United States or to major medical, psychiatric and surgical treatment;

(2) the authority to represent the child in legal actions and to make other decisions of substantial legal significance concerning the child;

(3) the authority and duty of reasonable visitation of the child;

(4) the rights and responsibilities of legal custody when the physical custody of the child is exercised by the child's parents, except when legal custody has been vested in another person; and

(5) when the rights of the child's parents have been terminated as provided for in the laws governing termination of parental rights or when both of the child's parents are deceased, the authority to consent to the adoption of the child and to make any other decision concerning the child that the child's parents could have made;

J. "guardian ad litem" means an attorney appointed by the children's court to represent and protect the best interests of the child in a court proceeding; provided that no party or employee or representative of a party to the proceeding shall be appointed to serve as a guardian ad litem;

K. "Indian child" means an unmarried person who is:

(1) less than eighteen years old;

(2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and

(3) the biological child of a member of an Indian tribe;

L. "Indian child's tribe" means:

(1) the Indian tribe in which an Indian child is a member or eligible for membership; or

(2) in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts;

M. "judge", when used without further qualification, means the judge of the court;

N. "legal custody" means a legal status created by the order of the court or other court of competent jurisdiction that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States, all subject to the powers, rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities. A person granted legal custody of a child shall exercise the rights and responsibilities as custodian personally, unless otherwise authorized by the court entering the order;

O. "parent" or "parents" includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child. A parent retains all of the duties and authority of guardianship and legal custody of the child, unless otherwise limited or altered by court order;

P. "permanency plan" means a determination by the court that the child's interest will be served best by:

(1) return to the parent;

(2) placement with a person who will be the child's permanent guardian;

(3) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;

(4) placement in the custody of the department with the child placed in the home of a fit and willing relative; or

(5) placement in the custody of the department under a planned permanent living arrangement;

Q. "person" means an individual or any other form of entity recognized by law;

R. "preadoptive parent" means a person with whom a child has been placed for adoption;

S. "tribal court" means:

(1) a court established and operated pursuant to a code or custom of an Indian tribe; or

(2) any administrative body of an Indian tribe that is vested with judicial authority;

T. "tribal court order" means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court's jurisdiction; and

U. "tribunal" means any judicial forum other than the court."

Section 2. Section 32A-2-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 31) is amended to read:

"32A-2-2. PURPOSE OF ACT.--The purpose of the Delinquency Act is:

A. consistent with the protection of the public interest, to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions to the extent of the child's age, education, mental and physical condition, background and all other relevant factors, and to provide a program of supervision, care and rehabilitation, including rehabilitative restitution by the child to the victims of the child's delinquent act to the extent that the child is reasonably able to do so;

B. to provide effective deterrents to acts of juvenile delinquency, including an emphasis on community-based alternatives; and

C. to strengthen families and to successfully reintegrate children into homes and communities."

Section 3. Section 32A-2-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 32, as amended) is amended to read:

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a child that would be designated as a crime under the law if committed by an adult, including the following offenses:

(1) an offense pursuant to municipal traffic codes or the Motor Vehicle Code:

(a) driving while under the influence of intoxicating liquor or drugs;

(b) failure to stop in the event of an accident causing death, personal injury or damage to property;

(c) unlawful taking of a vehicle or motor vehicle;

(d) receiving or transferring of a stolen vehicle or motor vehicle;

(e) homicide by vehicle;

(f) injuring or tampering with a vehicle;

(g) altering or changing of an engine number or other vehicle identification numbers;

(h) altering or forging of a driver's license or permit or any making of a fictitious license or permit;

(i) reckless driving;

(j) driving with a suspended or revoked license; or

(k) an offense punishable as a felony;

(2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means an establishment where meals are prepared and served primarily for on-premises consumption and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include an establishment, as defined in regulations promulgated by the director of the special investigations division of the department of public safety, that serves only hamburgers, sandwiches, salads and other fast foods;

(3) a felony violation of the provisions of Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped and for which a fine may be imposed or a civil damage awarded;

(4) a violation of Section 30-29-2 NMSA 1978, regarding the illegal use of a glue, aerosol spray product or other chemical substance;

(5) a violation of the Controlled Substances Act;

(6) escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any placement made by the department by a child who has been adjudicated a delinquent child;

(7) a violation of Section 30-15-1.1 NMSA 1978 regarding unauthorized graffiti on personal or real property; or

(8) a violation of an order of protection issued pursuant to the provisions of the Family Violence Protection Act;

B. "delinquent child" means a child who has committed a delinquent act;

C. "delinquent offender" means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender;

D. "detention facility" means a place where a child may be detained under the Children's Code pending court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child;

E. "felony" means an act that would be a felony if committed by an adult;

F. "misdemeanor" means an act that would be a misdemeanor or petty misdemeanor if committed by an adult;

G. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. "Restitution" does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means a person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities. Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32A-2-27 NMSA 1978;

H. "serious youthful offender" means an individual fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder. A "serious youthful offender" is not a delinquent child as defined pursuant to the provisions of this section; and

I. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fourteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

(a) second degree murder, as provided in Section 30-2-1 NMSA 1978;

(b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;

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

(d) aggravated battery, as provided in Subsection C of Section 30-3-5 NMSA 1978;

(e) aggravated battery upon a peace officer, as provided in Subsection C of Section 30-22-25 NMSA 1978;

(f) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;

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

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

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

(j) aggravated burglary, as provided in Section 30-16-4 NMSA 1978;

(k) aggravated arson, as provided in Section 30-17-6 NMSA 1978; or

(l) abuse of a child that results in great bodily harm or death to the child, as provided in Section 30-6-1 NMSA 1978;

(2) fourteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fourteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."

Section 4. Section 32A-2-5 NMSA 1978 (being Laws 1993, Chapter 77, Section 34, as amended) is amended to read:

"32A-2-5. JUVENILE PROBATION AND PAROLE SERVICES--
ESTABLISHMENT--JUVENILE PROBATION AND PAROLE OFFICERS--POWERS
AND DUTIES.--

A. Juvenile probation and parole services shall be provided by the department.

B. To carry out the objectives and provisions of the Delinquency Act, but subject to its limitations, the department has the power and duty to:

(1) receive and examine complaints and allegations that a child is a delinquent child for the purpose of considering beginning a proceeding pursuant to the provisions of the Delinquency Act;

(2) make case referrals for services as appear appropriate or desirable;

(3) make predisposition studies and assessments and submit reports and recommendations to the court;

(4) supervise and assist a child placed on probation or parole or under supervision by court order or by the juvenile parole board;

(5) give notice to any individual who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act of the sealing of that individual's records in accordance with that act;

(6) informally dispose of up to three misdemeanor charges brought against a child within two years;

(7) give notice to the children's court attorney of the receipt of any felony complaint and of any recommended adjustment of such felony complaint;

(8) identify an Indian child for the purpose of contacting the Indian child's tribe in delinquency cases; and

(9) contact an Indian child's tribe to consult and exchange information for the purpose of preparing a predisposition report when commitment or placement of an Indian child is contemplated or has been ordered and indicate in the report the name of the person contacted in the Indian child's tribe and the results of the contact.

C. A juvenile probation and parole officer does not have the powers of a law enforcement officer. A juvenile probation and parole officer may take into physical custody and place in detention, subject to application of a detention risk assessment instrument, a child who is under supervision as a delinquent child or as a youthful offender when there is reasonable cause to believe that the child has violated the conditions of his probation or that the child may leave the jurisdiction of the court. Taking a child into custody under this subsection is subject to and shall proceed in accordance with the provisions of the Delinquency Act relating to custody and detention procedures and criteria."

Section 5. Section 32A-2-10 NMSA 1978 (being Laws 1993, Chapter 77, Section 39) is amended to read:

"32A-2-10. RELEASE OR DELIVERY FROM CUSTODY.--

A. A person taking a child into custody shall, with all reasonable speed:

(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate;

(2) release the child to the child's parent, guardian or custodian upon their written promise to bring the child before the court when requested by the court. If the parent, guardian or custodian fails, when requested, to bring the child before the court as promised, the court may order the child taken into custody and brought before the court;

(3) deliver the child to a place of detention as provided in Section 32A-2-12 NMSA 1978;

(4) deliver the child to a medical facility, if available, if the child is believed to be suffering from a serious illness that requires prompt treatment or prompt diagnosis; or

(5) deliver the child to an evaluation facility, if available, if the person taking the child into custody has reasonable grounds to believe the child presents a likelihood of serious harm to himself or others or is suffering from some other serious mental condition or illness that requires prompt treatment or prompt diagnosis.

B. When an alleged delinquent child is delivered to a place of detention as provided in Section 32A-2-12 NMSA 1978, only a department employee or a trained county detention professional designated by the department may place the child in detention, in accordance with the criteria for detention set forth in Section 32A-2-11 NMSA 1978. If the criteria for detention of an alleged delinquent child are not met, the child shall be released from custody.

C. If a child is taken into custody and is not released to the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian and to the court, together with a statement of the reason for taking the child into custody.

D. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian in accordance with the conditions and time limits set forth in the Children's Court Rules."

Section 6. Section 32A-2-11 NMSA 1978 (being Laws 1993, Chapter 77, Section 40) is amended to read:

"32A-2-11. CRITERIA FOR DETENTION OF CHILDREN.--

A. Unless ordered by the court pursuant to the provisions of the Delinquency Act, a child taken into custody for an alleged delinquent act shall not be placed in detention unless a detention risk assessment instrument is completed and a determination is made that the child:

- (1) poses a substantial risk of harm to himself;
- (2) poses a substantial risk of harm to others; or
- (3) has demonstrated that he may leave the jurisdiction of the court.

B. The criteria for detention in this section shall govern the decisions of all persons responsible for determining whether detention is appropriate prior to a detention hearing, based upon review of the detention risk assessment instrument.

C. The department shall develop and implement a detention risk assessment instrument. The department shall collect and analyze data regarding the application of the detention risk assessment instrument. On January 1, 2004, the department shall provide the legislature with a written report with respect to its collection and analysis of data regarding the application of the detention risk assessment instrument."

Section 7. Section 32A-2-12 NMSA 1978 (being Laws 1993, Chapter 77, Section 41) is amended to read:

"32A-2-12. PLACEMENT OR DETENTION.--

A. A child alleged to be a delinquent child may be placed or detained, pending a court hearing, in any of the following places:

(1) a licensed foster home or a home otherwise authorized under the law to provide foster or group care;

(2) a facility operated by a licensed child welfare services agency;

(3) a shelter-care facility provided for in the Children's Shelter Care Act or a detention facility certified by the department for children alleged to be delinquent children;

(4) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent may be confined pursuant to Section 32A-2-19 NMSA 1978, designated by the court and which meets the standards for detention facilities pursuant to the Children's Code and federal law; or

(5) the child's home or place of residence, under conditions and restrictions approved by the court.

B. A child alleged to be a youthful offender may be detained, pending a court hearing, in any of the following places:

(1) a detention facility, licensed by the department, for children alleged to be delinquent children; or

(2) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined pursuant to Section 32A-2-19 NMSA 1978, designated by the court and that meets the standards for detention facilities pursuant to the Children's Code and federal law.

C. A child adjudicated as a youthful offender who is violent toward staff or other residents in a detention facility may be transferred and detained, pending a court hearing, in a county jail. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of his age, and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

D. A child who has previously been incarcerated as an adult or a person older than eighteen years of age shall not be detained in a juvenile detention facility or a facility for the long-term care and rehabilitation of delinquent children, but may be detained in a county jail. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of his age, and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

E. A child alleged to be a serious youthful offender may be detained pending a court hearing in any of the following places, prior to arraignment in metropolitan, magistrate or district court:

(1) a detention facility, licensed by the department, for children alleged to be delinquent children;

(2) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined pursuant to Section 32A-2-19 NMSA 1978, designated by the court which meets the standards for detention facilities pursuant to the Children's Code and federal law; or

(3) a county jail, if a facility in Paragraph (1) or (2) of this subsection is not appropriate. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of his age and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult."

Section 8. Section 32A-2-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 42) is amended to read:

"32A-2-13. DETENTION HEARING REQUIRED ON DETAINED CHILDREN--PROBABLE CAUSE DETERMINATION--COURT DETERMINATION--DISPOSITION.--

A. When a child who has been taken into custody is not released but is detained:

(1) a judicial determination of probable cause shall be made by a judge or special master or magistrate within forty-eight hours, including Saturdays, Sundays and legal holidays, except for children taken into custody under an arrest warrant pursuant to the Children's Court Rules. A statement by a law enforcement officer, which shall include the charges, may be the basis of a probable cause determination. The probable cause determination shall be nonadversarial, may be held in the absence of the child and counsel and may be conducted by telephone. If the court finds no probable cause to believe the child committed an offense, the child shall be released;

(2) a petition shall be filed within twenty-four hours from the time the child is taken into custody, excluding Saturdays, Sundays and legal holidays, and if not filed within the stated time, the child shall be released; and

(3) a detention hearing shall be held within twenty-four hours, excluding Saturdays, Sundays and legal holidays, from the time of filing the petition to

determine whether continued detention is required pursuant to the criteria established by the Children's Code.

B. The judge may appoint one or more persons to serve as special master on a full- or part-time basis for the purpose of holding detention hearings. A juvenile probation and parole officer shall not be appointed as a special master. The judge shall approve all contracts with special masters and shall fix their hourly compensation, subject to the approval of the director of the administrative office of the courts.

C. Notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing shall be given by the person designated by the court to the child's parents, guardian or custodian, if they can be found, and to the child. 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.

D. At the commencement of the detention hearing, the judge or special master shall advise the parties of their basic rights provided in the Children's Code and shall appoint counsel, guardians and custodians, if appropriate.

E. If the judge or special master finds that the child's detention is appropriate under the criteria established by the Children's Code, the judge or special master shall order detention in an appropriate facility in accordance with the Children's Code.

F. If the judge or special master finds that detention of the child is not appropriate under the criteria established by the Children's Code, the judge or special master shall order the release of the child, but, in so doing, may order one or more of the following conditions to meet the individual needs of the child:

(1) place the child in the custody of a parent, guardian or custodian or under the supervision of an agency agreeing to supervise the child;

(2) place restrictions on the child's travel, association with other persons or place of abode during the period of the child's release; or

(3) impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children established by the Children's Code, including a condition requiring that the child return to custody as required.

G. An order releasing a child on any conditions specified in this section may at any time be amended to impose additional or different conditions of release or to return the child to custody or detention for failure to conform to the conditions originally imposed.

H. At the detention hearing, all relevant and material evidence helpful in determining the need for detention may be admitted by the judge or special master even though it would not be admissible in a hearing on the petition.

I. If the child is not released at the detention hearing and a parent, guardian or custodian was not notified of the hearing and did not appear or waive appearance at the detention hearing, the judge or special master shall rehear the detention matter without unnecessary delay upon the filing of an affidavit stating the facts and a motion for rehearing.

J. If a child is not released at the detention hearing, the child's detention may be subsequently reviewed by the court or the court may review the child's detention in conjunction with a pretrial conference.

K. If a child is not placed within ten days after a disposition hearing, the child may be released and placed under appropriate supervision, so long as the child does not pose a flight risk or substantial risk of harm to himself or others."

Section 9. Section 32A-2-14 NMSA 1978 (being Laws 1993, Chapter 77, Section 43) is amended to read:

"32A-2-14. BASIC RIGHTS.--

A. A child subject to the provisions of the Delinquency Act is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

B. If after due notice to the parent, guardian or custodian and after a hearing determining indigency, the parent, guardian or custodian is declared indigent by the court, the public defender shall represent the child. If the court finds that the parent, guardian or custodian is financially able to pay for an attorney but is unwilling to do so, the court shall order the parent, guardian or custodian to reimburse the state for public defender representation.

C. No person subject to the provisions of the Delinquency Act who is alleged or suspected of being a delinquent child shall be interrogated or questioned without first advising the child of the child's constitutional rights and securing a knowing, intelligent and voluntary waiver.

D. Before any statement or confession may be introduced at a trial or hearing when a child is alleged to be a delinquent child, the state shall prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained.

E. In determining whether the child knowingly, intelligently and voluntarily waived the child's rights, the court shall consider the following factors:

- (1) the age and education of the respondent;
- (2) whether the respondent is in custody;
- (3) the manner in which the respondent was advised of his rights;
- (4) the length of questioning and circumstances under which the respondent was questioned;
- (5) the condition of the quarters where the respondent was being kept at the time he was questioned;
- (6) the time of day and the treatment of the respondent at the time that he was questioned;
- (7) the mental and physical condition of the respondent at the time that he was questioned; and
- (8) whether the respondent had the counsel of an attorney, friends or relatives at the time of being questioned.

F. Notwithstanding any other provision to the contrary, no confessions, statements or admissions may be introduced against a child under the age of thirteen years on the allegations of the petition. There is a rebuttable presumption that any confessions, statements or admissions made by a child thirteen or fourteen years old to a person in a position of authority are inadmissible.

G. An extrajudicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the delinquent acts alleged in the petition unless it is corroborated by other evidence.

H. The child and the parent, guardian or custodian of the child shall be advised by the court or its representative that the child shall be represented by counsel at all stages of the proceedings on a delinquency petition. If counsel is not retained for the child or if it does not appear that counsel will be retained, counsel shall be appointed for the child.

I. A child under the age of thirteen alleged or adjudicated to be a delinquent child shall not be fingerprinted or photographed for identification purposes without obtaining a court order.

J. The court, at any stage of the proceeding on a petition under the Children's Code, may appoint a guardian ad litem for a child who is a party if the child has no parent, guardian or custodian appearing on behalf of the child or if the parent's, guardian's or custodian's interests conflict with those of the child. A party to the

proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

K. The court shall appoint a guardian for a child if the court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.

L. A person afforded rights under the Delinquency Act shall be advised of those rights at that person's first appearance before the court on a petition under that act.

M. A serious youthful offender who is detained prior to trial in an adult facility has a right to bail as provided under SCRA 1986, Rule 5-401. A child held in a juvenile facility designated as a place of detention prior to adjudication does not have a right to bail but may be released pursuant to the provisions of the Delinquency Act.

N. The provisions of the Delinquency Act shall not be interpreted to limit the right of a child to petition a court for a writ of habeas corpus."

Section 10. Section 32A-2-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 48, as amended) is amended to read:

"32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT OFFENDER.--

A. At the conclusion of the dispositional hearing, the court may make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with the child's parents, siblings and any other person who may significantly affect the child's best interests;

(2) the child's adjustment to his home, school and community;

(3) the mental and physical health of all individuals involved;

(4) the wishes of the child as to his custodian;

(5) the wishes of the child's parents as to the child's custody;

(6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the predisposition report; and

(8) the ability of the parents to care for the child in the home.

B. If a child is found to be delinquent, the court may impose a fine not to exceed the fine that could be imposed if the child were an adult and may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) any disposition that is authorized for the disposition of a neglected or abused child, in accordance with the Abuse and Neglect Act;

(2) transfer legal custody to the department, an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the department as a juvenile reception facility. The department shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child. The judge may include recommendations for placement of the child. Commitments are subject to limitations and modifications set forth in Section 32A-2-23 NMSA 1978. The types of commitments include:

(a) a short-term commitment of one year, followed by a period of parole for ninety days;

(b) a long-term commitment for no more than two years in a long-term facility for the care and rehabilitation of adjudicated delinquent children;

(c) if the child is a delinquent offender who committed one of the criminal offenses set forth in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to age twenty-one, unless sooner discharged; or

(d) if the child is a youthful offender, a commitment to age twenty-one, unless sooner discharged;

(3) place the child on probation under those conditions and limitations as the court may prescribe;

(4) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32A-2-4 NMSA 1978 for a period not to exceed fifteen days within a three hundred sixty-five day time period;

(5) if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA 1978, the court shall only enter a judgment placing the child on probation or ordering restitution or imposing a fine not to exceed the fine that could be imposed if the child were an adult or any combination of these dispositions; or

(6) if a child is found to be delinquent solely on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, transfer custody of the child to the department for a period not to exceed six months without further order of the court; provided that this transfer shall not be made unless the court first determines that the department is able to provide or contract for adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.

C. When the child is an Indian child, the Indian child's cultural needs shall be considered in the dispositional judgment and reasonable access to cultural practices and traditional treatment shall be provided.

D. No child found to be delinquent shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

E. Whenever the court vests legal custody in an agency, institution or department, it shall transmit with the dispositional judgment copies of the clinical reports, predisposition study and report and other information it has pertinent to the care and treatment of the child.

F. Prior to any child being placed in the custody of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard.

G. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

H. In addition to any other disposition pursuant to this section or any other penalty provided by law, when a child is adjudicated delinquent on the basis of Paragraph (7) of Subsection A of Section 32A-2-3 NMSA 1978, the child shall perform the mandatory community service set forth in Section 30-15-1.1 NMSA 1978. When a

child fails to completely perform the mandatory community service, the name and address of the child's parent or legal guardian shall be published in a newspaper of general circulation, accompanied by a notice that he is the parent or legal guardian of a child adjudicated delinquent for committing graffiti."

Section 11. Section 32A-2-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 49, as amended) is amended to read:

"32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

A. The court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender. The children's court attorney shall file a notice of intent to invoke an adult sentence within ten working days of the filing of the petition, provided that the court may extend the time for filing of the notice of intent to invoke an adult sentence, for good cause shown, prior to the adjudicatory hearing. A preliminary hearing by the court or a hearing before a grand jury shall be held, within ten days after the filing of the intent to invoke an adult sentence, to determine whether probable cause exists to support the allegations contained in the petition.

B. If the children's court attorney has filed a notice of intent to invoke an adult sentence and the child is adjudicated as a youthful offender, the court shall make the following findings in order to invoke an adult sentence:

(1) the child is not amenable to treatment or rehabilitation as a child in available facilities; and

(2) the child is not eligible for commitment to an institution for the developmentally disabled or mentally disordered.

C. In making the findings set forth in Subsection B of this section, the judge shall consider the following factors:

(1) the seriousness of the alleged offense;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether a firearm was used to commit the alleged offense;

(4) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

(5) the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living;

(6) the record and previous history of the child;

(7) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and

(8) any other relevant factor, provided that factor is stated on the record.

D. If a child has previously been sentenced as an adult pursuant to the provisions of this section, there shall be a rebuttable presumption that the child is not amenable to treatment or rehabilitation as a child in available facilities.

E. If the court invokes an adult sentence, the court may sentence the child to less than, but shall not exceed, the mandatory adult sentence. A youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences. This transfer terminates the jurisdiction of the court over the child with respect to the delinquent acts alleged in the petition.

F. If a juvenile disposition is appropriate, the court shall follow the provisions set forth in Section 32A-2-19 NMSA 1978. A youthful offender may be subject to extended commitment in the care of the department until the age of twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA 1978.

G. A fourteen to eighteen year old child charged with first degree murder, but convicted of an offense less than first degree murder, is subject to the dispositions set forth in this section."

Section 12. Section 32A-2-23 NMSA 1978 (being Laws 1993, Chapter 77, Section 52, as amended) is amended to read:

"32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

A. A judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the care and rehabilitation of delinquent children divests the court of jurisdiction at the time of transfer of custody, unless the transfer of legal custody is for a commitment not exceeding fifteen days pursuant to the provisions of Section 32A-2-19 NMSA 1978, in which case the court retains jurisdiction, and:

(1) the juvenile parole board pursuant to the Juvenile Parole Board Act has the exclusive power to parole or release the child, subject to the provisions of Section 32A-7-8 NMSA 1978;

(2) the supervision of a child after release under Paragraph (1) of this subsection shall be conducted by the department;

(3) a child who completes a short-term commitment of one year, upon his release shall be placed on parole and supervised by the department for a period of ninety days; and

(4) the period of time a child absconds from parole or probation supervision shall toll all time limits for the requirement of filing a petition to revoke probation or parole and shall toll the computation of the period of probation or parole supervision pursuant to the provisions of the Delinquency Act.

B. A judgment of probation or protective supervision shall remain in force for an indeterminate period not to exceed the term of commitment from the date entered.

C. A child shall be released by an agency and probation or supervision shall be terminated by juvenile probation and parole services or the agency providing supervision when it appears that the purpose of the order has been achieved before the expiration of the period of the judgment. A release or termination and the reasons therefor shall be reported promptly to the court in writing by the releasing authority.

D. Prior to the expiration of a long-term commitment, as provided for in Section 32A-2-19 NMSA 1978, the court may extend the judgment for additional periods of one year until the child reaches the age of twenty-one if the court finds that the extension is necessary to safeguard the welfare of the child or the public interest.

E. Prior to the expiration of a judgment of probation, the court may extend the judgment for an additional period of one year until the child reaches the age of twenty-one if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the child.

F. The court may dismiss a motion if it finds after preliminary investigation that the motion is without substance. If the court is of the opinion that the matter should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency. The court may terminate a judgment if it finds that the child is no longer in need of care, supervision or rehabilitation or it may enter a judgment extending or modifying the original judgment if it finds that action necessary to safeguard the child or the public interest.

G. A child may make a motion to modify a children's court or adult disposition within thirty days of the judge's decision. If the court is of the opinion that the matter should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency."

Section 13. Section 32A-2-26 NMSA 1978 (being Laws 1993, Chapter 77, Section 55) is amended to read:

"32A-2-26. SEALING OF RECORDS.--

A. On motion by or on behalf of a person who has been the subject of a delinquency petition or on the court's own motion, the court shall vacate its findings, orders and judgments on the petition and order the legal and social files and records of the court, probation services and any other agency in the case sealed. If requested in the motion, the court shall also order law enforcement files and records sealed. An order sealing records and files shall be entered if the court finds that:

(1) two years have elapsed since the final release of the person from legal custody and supervision or two years have elapsed since the entry of any other judgment not involving legal custody or supervision; and

(2) the person has not, within the two years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor involving moral turpitude or been found delinquent by a court and no proceeding is pending seeking such a conviction or finding.

B. Reasonable notice of the motion shall be given to:

(1) the children's court attorney;

(2) the authority granting the release;

(3) the law enforcement officer, department and central depository having custody of the law enforcement files and records if those records are included in the motion; and

(4) any other agency having custody of records or files subject to the sealing order.

C. Upon the entry of the sealing order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted. The court, law enforcement officers and departments and agencies shall reply, and the person may reply, to an inquiry that no record exists with respect to the person. Copies of the sealing order shall be sent to each agency or official named in the order.

D. Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the court only:

(1) upon motion by the person who is the subject of the records and only to those persons named in the motion; and

(2) in its discretion, in an individual case, to any clinic, hospital or agency that has the person under care or treatment or to other persons engaged in fact finding or research.

E. Any finding of delinquency or need of services or conviction of a crime subsequent to the sealing order may at the court's discretion be used by the court as a basis to set aside the sealing order.

F. A person who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act shall be notified in writing by the juvenile probation and parole officer of the right to have records sealed at the expiration of the disposition.

G. A person who is not the subject of a delinquency petition or a person who is determined by the court not to be a delinquent offender shall have his files and records automatically sealed by the court.

H. If two years have elapsed since a person was released from legal custody and supervision and the department has not received any new allegations of delinquency regarding the person, that person's files and records shall be automatically sealed."

Section 14. Section 32A-2-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 58) is amended to read:

"32A-2-29. MOTOR VEHICLE CODE VIOLATIONS.--

A. The municipal, magistrate or metropolitan court shall have original exclusive jurisdiction over all Motor Vehicle Code or municipal traffic code violations when the person alleged to have committed the violation is a child, with the exception of those violations contained in Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 and all traffic offenses alleged to have been committed by the child arising out of the same occurrence pursuant to Subsection B of this section.

B. If the court acquires jurisdiction over a child pursuant to any of those Motor Vehicle Code violations contained in Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978, it shall have jurisdiction over all traffic offenses alleged to have been committed by the child arising out of the same occurrence.

C. All traffic offenses which the child is found to have committed by the municipal, magistrate or metropolitan court or for which the child is adjudicated delinquent by the children's court shall be subject to the reporting requirements and the suspension and revocation provisions of the Motor Vehicle Code and shall not be subject to the confidentiality provisions of the Delinquency Act.

D. Only the children's court may incarcerate a child who has been found guilty of any Motor Vehicle Code or municipal traffic code violations."

Section 15. Section 32A-2-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 61) is amended to read:

"32A-2-32. CONFIDENTIALITY--RECORDS.--

A. All social records, including diagnostic evaluation, psychiatric reports, medical reports, social studies reports, pre-parole reports and supervision histories obtained by the juvenile probation office, parole officers and parole board or in possession of the department, are privileged 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:

- (1) court personnel;
- (2) court appointed special advocates;
- (3) the child's attorney or guardian ad litem;
- (4) department personnel;
- (5) any local substitute care review board or any agency contracted to implement local substitute care review boards;
- (6) corrections department personnel;
- (7) law enforcement officials;
- (8) district attorneys;
- (9) any state government social services agency in any state;
- (10) those persons or entities of a child's Indian tribe specifically authorized to inspect such records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;
- (11) tribal juvenile justice system and social service representatives;
- (12) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent when the records concern the social, medical, psychological or educational needs of the child;

(13) school personnel involved with the child if the records concern the child's social or educational needs;

(14) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardians or custodian or other family members;

(15) representatives of the protection and advocacy system, pursuant to the provisions of the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991; and

(16) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. 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 petty misdemeanor."

Section 16. Section 32A-2-33 NMSA 1978 (being Laws 1999, Chapter 216, Section 1) is amended to read:

"32A-2-33. CHILD IN POSSESSION OF A FIREARM ON SCHOOL PREMISES--DETENTION--HEARING.--

A. If a public school administrator or employee has reasonable cause to believe that a child is in possession of or has been in possession of a firearm on school premises in violation of Section 30-7-2.1 NMSA 1978, the administrator or employee shall immediately report the child's actions to a law enforcement agency and the children, youth and families department.

B. Upon receipt of a report pursuant to Subsection A of this section, the law enforcement agency may conduct an investigation to determine if there is probable cause to believe that the child possessed a firearm on school premises.

C. If the law enforcement agency determines there is probable cause to believe that the child possessed a firearm on school premises, the law enforcement agency may take the child into custody and deliver the child to a detention facility licensed by the department. After the child is delivered to a detention facility, the department shall comply with the notification provisions set forth in Subsection C of Section 32A-2-10 NMSA 1978. The child shall be detained in the detention facility, pending a detention hearing pursuant to the provisions of Section 32A-2-13 NMSA 1978.

D. As used in this section, "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an

explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. "Firearm" includes any handgun, rifle or shotgun."

Section 17. Section 32A-7-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 201) is amended to read:

"32A-7-8. PAROLE ELIGIBILITY.--

A. A child is eligible to appear before the juvenile parole board forty days after the entry of a judgment transferring legal custody to an agency for the care and rehabilitation of delinquent children, unless recommended for an earlier appearance by the agency responsible for such care and rehabilitation.

B. In the event parole is denied, the child shall be eligible for review sixty days thereafter.

C. Consistent with the provisions of the Victims of Crime Act, in the event parole for a child is denied by the juvenile parole board, but parole is recommended for the child by the department, within ten days after the denial of parole the department shall transmit all records for review by the court of the judicial district from which legal custody of the child was transferred. The court shall have jurisdiction to review the matter without conducting a formal hearing and to issue an order that affirms the parole board's denial of parole or that grants parole to the child.

D. The juvenile parole board may review the case of any child upon its own motion at any time after parole is denied.

E. The provisions of the Juvenile Parole Board Act apply to all children who, on July 1, 1993, are on parole or eligible to be placed on parole with the same effect as if that act had been in effect at the time they were placed on parole or became eligible to be placed on parole."

Section 18. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 507

CHAPTER 226

CHAPTER 226, LAWS 2003

AN ACT

RELATING TO ELECTIONS; ALLOWING FOR HAND TALLYING OF BALLOTS ON APPROVED COMPUTER SYSTEMS.

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

Section 1. Section 1-11-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 224, as amended) is amended to read:

"1-11-14. TALLY SHEETS AND STATEMENTS OF CANVASS--
PREPARATION.--Prior to election day, the secretary of state shall cause to be printed in the tally sheets and statements of canvass, in the proper places and under the proper designations, the names of all candidates appearing on the official ballot. The secretary shall approve a county's use of computer-based tally sheets if the county submits the software program to be used for tallying to the secretary at least sixty days prior to the election and the secretary determines that the program is acceptable for the proposed use."

HOUSE BILL 603, AS AMENDED

CHAPTER 227

CHAPTER 227, LAWS 2003

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AMENDING THE EDUCATIONAL RETIREMENT ACT TO ALLOW PROVISIONAL MEMBERS TO ACQUIRE EARNED SERVICE CREDIT FOR CERTAIN PERIODS OF EMPLOYMENT.

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

Section 1. Section 22-11-17 NMSA 1978 (being Laws 1967, Chapter 16, Section 141, as amended) is amended to read:

"22-11-17. PROVISIONAL MEMBERSHIP.--

A. A provisional member shall be covered by the provisions of the Educational Retirement Act but shall have the option to exempt himself from its coverage. A provisional member exempting himself from the provisions of the Educational Retirement Act shall not be entitled to the benefits or coverage under any other state retirement program except as otherwise provided in this section. This section

shall not affect any rights a provisional member may have under the provisions of the federal Social Security Act. This option to exempt must be exercised within one year of employment according to the regulations adopted by the board. Any provisional member exempting himself pursuant to this section shall be entitled to a refund of any contributions made pursuant to the Educational Retirement Act prior to the exercise of the exemption.

B. A provisional member not exempt from the coverage of the Educational Retirement Act shall have the right to earned service-credit for periods of employment subsequent to July 1, 1957 and prior to July 1, 1961, provided that all contributions at the rates in effect during that period of employment are paid. If a provisional member chooses to make the contributions for that period, the local administrative unit employing a member during that period shall pay the employer's contribution at the rate in effect during that period of employment. Contributions prior to July 1, 1961 by both the provisional member and the local administrative unit shall bear interest at the rate of three percent a year from July 1, 1961 until paid.

C. A provisional member exempt from the coverage of the provisions of the Educational Retirement Act shall have the right to revoke the exemption at any time; however, within the first two weeks following the beginning of each school year, such provisional member shall be informed by the local administrative unit in writing of his right to revoke the exemption and shall sign a statement to the effect that he does or does not wish to revoke the exemption. A copy of such statement shall be kept in the personnel file of the provisional member.

D. A provisional member who revokes the exemption from coverage may, at any time before June 30, 2006, acquire earned service credit for periods of employment during which the exemption or exemptions were in force if both the member contributions and the local administrative unit contributions, at the rates in effect during the periods of employment and applied to the earnings of the member during those periods, are paid to the fund, together with interest at the actuarial rate set by the board. The contributions shall be paid in the following manner:

(1) both the member contributions and the local administrative unit contributions, together with interest, shall be paid by the member; or

(2) if the member tenders payment of the member contributions, with interest, the local administrative unit by whom the member was employed may, but shall not be obligated to, pay the local administrative unit contributions, with interest.

E. A provisional member employed by the board, the department of education, the New Mexico school for the deaf, the northern New Mexico state school, the New Mexico school for the visually handicapped, the New Mexico girls' school, the New Mexico boys' school or the Los Lunas medical center shall have the option of qualifying for coverage under either the Educational Retirement Act or the public employees retirement association of New Mexico. This option shall be exercised by

filing a written election with both the educational retirement director and the executive secretary of the public employees retirement association of New Mexico. This election shall be made within six months after employment and shall be irrevocable regardless of subsequent employment or reemployment in any administrative unit enumerated in this subsection. Until this election is made, the provisional member shall be covered and shall be required to make contributions under the Educational Retirement Act."

Section 2. Section 22-11-21.3 NMSA 1978 (being Laws 1998, Chapter 38, Section 1) is amended to read:

"22-11-21.3. PICK UP--ROLLOVER.--

A. Commencing on July 1, 1998, each local administrative unit may, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up, for the purposes specified in that section, member contributions permitted by Subsection D of Section 22-11-17 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up under this section shall continue to be designated member contributions for all purposes of the Educational Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are voluntary, and the member shall have no option concerning the pick up to receive the contributed amounts directly instead of having them paid by the local administrative unit to the fund. The contribution may be paid through the local administrative unit's payroll deduction.

B. Commencing July 1, 1998, the board may accept rollover contributions from other retirement funds solely for and subject to the restrictions set forth in Section 22-11-17 NMSA 1978 and Subsection B of Section 22-11-34 NMSA 1978 and the applicable restrictions set forth in the Internal Revenue Code of 1986 for pension plan qualification."

HOUSE BILL 657

CHAPTER 228

CHAPTER 228, LAWS 2003

AN ACT

RELATING TO SPECIAL DISTRICTS; AMENDING PROVISIONS OF THE WATERSHED DISTRICT ACT.

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

Section 1. Section 73-20-6 NMSA 1978 (being Laws 1957, Chapter 210, Section 6, as amended) is amended to read:

"73-20-6. PETITIONS.--When fifty or more landowners within a proposed watershed district, or twenty percent of the landowners within the proposed district, whichever is less, desire to form a watershed district, they shall file a petition with the board of supervisors. The petition shall define the boundaries of the proposed district, the number of acres of land involved, reasons for requesting creation of the district, the proposed name for the watershed district and other information pertinent to the proposal. In the event of a challenge to the validity of signatures on a petition, the burden of proof shall be on the sponsors of the petition."

Section 2. Section 73-20-10 NMSA 1978 (being Laws 1957, Chapter 210, Section 10) is amended to read:

"73-20-10. BALLOTS.--The question to be voted on shall be submitted by ballots that define the boundaries of the proposed district as determined by the board of supervisors. Only owners of lands lying within the boundaries of the territory, as determined by the board, shall be eligible to vote in the referendum."

Section 3. Section 73-20-11 NMSA 1978 (being Laws 1957, Chapter 210, Section 11, as amended) is amended to read:

"73-20-11. VOTES--RESULTS.--The votes shall be counted by the election officers at the close of the polls and report of the results along with the ballots delivered to the polling superintendent, who shall certify the results to the board of supervisors. If a majority of the votes cast favor creation of the district, the board of supervisors shall certify the results to the county clerk in the county involved. Upon proper recording of the action, the watershed district shall be duly created. After recording, the certification shall be filed with the New Mexico department of agriculture."

Section 4. Section 73-20-12 NMSA 1978 (being Laws 1957, Chapter 210, Section 12, as amended) is amended to read:

"73-20-12. DIRECTORS--ELECTION.--

A. Within thirty days after a watershed district is created, the board of supervisors of the soil and water conservation district involved shall cause an election to be held for the election of a board of directors of the watershed district. The board shall consist of five members. The first board shall determine by lot from among its

membership two members to serve terms of two years, two members to serve terms of three years and one member to serve a term of four years. Thereafter, as these initial terms expire, their replacements shall be elected for terms of four years. Vacancies occurring before the expiration of a term shall be filled by the remaining members of the board for the unexpired term. Two or more vacancies occurring simultaneously shall be filled by appointment by the board of supervisors. The board of directors shall, under the supervision of the board of supervisors, be the governing body of the watershed district.

B. If the territory embraced within a watershed district lies within more than one soil and water conservation district, each additional soil and water conservation district having a minority of the land involved in the watershed shall be entitled to elect three additional directors. These additional directors after their election shall determine by lot one of their number to serve a term of two years, one a term of three years and one a term of four years. Thereafter, their successors shall be elected for terms of four years. The representatives of each of these minority districts shall fill vacancies in the district's membership for the unexpired term.

C. The board of directors shall annually elect from its membership a chairman, secretary and treasurer. The treasurer shall execute an official bond for the faithful performance of the duties of his office to be approved by the board of directors. The bond shall be executed with at least three solvent personal sureties whose solvency shall exceed the amount of the bond, or by a surety company authorized to do business in this state, and shall be in an amount determined by the board of directors. If the treasurer is required to execute a surety company bond, the premium of the bond shall be paid by the board of directors.

D. The board of directors shall prepare and submit to the department of finance and administration such reports as it may require from among those required to be submitted by other political subdivisions.

E. Each person desiring to be a director of a watershed district shall file a nominating petition with the board of supervisors, signed by ten or more landowners within the watershed districts of the county involved, or, if less than fifty landowners are involved, a majority of such landowners. If the candidates nominated do not exceed the positions available, they shall be declared elected. No person shall be eligible to be a director of a watershed district who is not a landowner in the district in which he seeks election."

Section 5. Section 73-20-13 NMSA 1978 (being Laws 1957, Chapter 210, Section 13, as amended) is amended to read:

"73-20-13. AUTHORITY.--Subject to the approval of the board of supervisors, the board of directors of a watershed district shall have power to:

A. levy an annual assessment on the real property within the district, within the limitations provided in Section 73-20-17 NMSA 1978, for administration,

construction, operation and maintenance of works of improvement within and without the district as are required by the district in the performance of its functions;

B. acquire by purchase, gift, grant, bequest, devise or through condemnation proceedings in the manner provided in the Eminent Domain Code property or rights of way necessary for the exercise of any authorized function of the district; provided that no property or water rights shall be condemned for the purposes of recreation;

C. construct, improve, operate, contract for and maintain such structures as may be necessary for the performance of any function authorized by the Watershed District Act;

D. borrow money necessary for the purpose of acquiring rights of way and establishing, constructing, reconstructing, repairing, enlarging and maintaining the structures and improvements required by the district in the performance of its functions and repay these loans with the proceeds of the annual assessment provided for in Subsection A of this section or by the issuance, negotiation and sale of its bonds as provided in Section 73-20-14 NMSA 1978; and

E. receive and grant assistance and cooperate with counties, municipalities and state and federal agencies in carrying out the provisions of the Watershed District Act."

Section 6. Section 73-20-14 NMSA 1978 (being Laws 1957, Chapter 210, Section 14, as amended) is amended to read:

"73-20-14. BONDS.--

A. Bonds authorized by Section 73-20-13 NMSA 1978 shall not be issued until proposed by order or resolution of the board of directors, specifying the purpose for which the funds are to be used, and the proposed undertaking, the amount of bonds to be issued, the rate of interest they are to bear and the amount of any necessary assessment levy in excess of the maximum authorized in Section 73-20-17 NMSA 1978 to establish a sinking fund for the liquidation of bonds as provided in Section 73-20-17 NMSA 1978. A copy of the order or resolution shall be certified to the board of supervisors.

B. The board of supervisors shall conduct a hearing on the proposal after notice given pursuant to Section 73-20-8 NMSA 1978. If it appears that the proposal is within the scope and purpose of the Watershed District Act and meets all other requirements of the law, the proposal shall be submitted to the landowners of the district by referendum under supervision of the board of supervisors.

C. Provisions of Sections 73-20-8 through 73-20-11 NMSA 1978 as to notice, qualifications of voters and manner of holding referendum election in organizing a watershed district shall apply to the referendum held under this section.

D. If two-thirds of the landowners voting favor the proposal, the bonds may be issued."

Section 7. Section 73-20-16 NMSA 1978 (being Laws 1957, Chapter 210, Section 15) is amended to read:

"73-20-16. PER DIEM AND MILEAGE.--Members of the board of directors shall receive no salaries, but the members shall be entitled to be reimbursed in accordance with the provisions of the Per Diem and Mileage Act."

Section 8. Section 73-20-17 NMSA 1978 (being Laws 1957, Chapter 210, Section 16, as amended) is amended to read:

"73-20-17. BUDGETS--TAX LEVY--LIMITATION.--Within the first quarter of each calendar year, the board of directors shall prepare an itemized budget of the funds needed for administration, construction, operation and maintenance of works of improvement. After approval of the budget by the board of supervisors, the board of directors shall, by order or resolution, levy an assessment sufficient to meet the budget, not to exceed five dollars (\$5.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the assessment authorized by 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 real property subject to taxation within the district, except that the limit on assessments does not apply to any levy necessary to provide a sinking fund for retirement of bonds authorized by Section 73-20-13 NMSA 1978. A copy of the budget and order or resolution shall be certified to the county assessor of the county or counties involved and to the department of finance and administration by July 15 of each year."

Section 9. Section 73-20-18 NMSA 1978 (being Laws 1957, Chapter 210, Section 17, as amended) is amended to read:

"73-20-18. ASSESSMENT LISTS.--

A. The board of directors shall prepare a list of the landowners within the defined boundaries of the watershed district in each county involved showing the number of acres subject to assessment and deliver it to the county assessor of the county involved. The assessor shall indicate the information on the tax rolls.

B. The county assessor shall compute the assessment due the district from each landowner in accordance with the rate fixed by the board of directors and the value of the real property indicated on the tax roll. The computation shall be made on

the regular tax bills in the manner as may be directed by regulation of the property tax division of the taxation and revenue department."

Section 10. Section 73-20-21 NMSA 1978 (being Laws 1957, Chapter 210, Section 20, as amended) is amended to read:

"73-20-21. ADDITION OF LAND.--

A. Any one or more owners of land may petition the board of supervisors to have their lands added to a watershed district. The petition shall define the boundaries of the land desired to be annexed, the number of acres of land involved and other information pertinent to the proposal. When the boundary described embraces lands of others than the petitioners, the petition shall so state and shall be signed by twenty-five or more of the landowners in the territory described, if fifty or more such owners are involved, or by a majority if less than fifty landowners are involved.

B. Within thirty days after the petition is filed, the board shall cause due notice to be given as provided in Section 73-20-8 NMSA 1978 of a hearing on the petition. All interested parties shall have a right to attend the hearing and be heard. The board shall determine whether the lands described in the petition or any portion of them shall be included in the district. If all the landowners in the territory involved are not petitioners, a referendum shall be held within the territory as provided in Sections 73-20-8 through 73-20-11 NMSA 1978 before making a final determination. If it is determined that the land should be added, this fact shall be certified by the board of supervisors to the county clerk in the county involved. After recording, the certification shall be filed with the New Mexico department of agriculture."

Section 11. Section 73-20-22 NMSA 1978 (being Laws 1957, Chapter 210, Section 21, as amended) is amended to read:

"73-20-22. DETACHING LAND.--The owner or owners of land who have not been, are not and cannot be benefited by their inclusion in the watershed district may petition the board of supervisors to have the lands withdrawn. The petitions shall be filed with the board of supervisors and the board of directors and shall describe the lands and state the reasons why they should be withdrawn. A hearing shall be held within thirty days after the petition is received. Due notice of the hearing as provided in Section 73-20-8 NMSA 1978 shall be given at least ten days before the hearing. If it is determined by the board of supervisors that the lands shall be withdrawn, the determination shall be certified to the county clerk of each county in which any portion of the lands lie. After recording, the certification shall be filed with the New Mexico department of agriculture."

Section 12. Section 73-20-23 NMSA 1978 (being Laws 1957, Chapter 210, Section 22, as amended) is amended to read:

"73-20-23. DISCONTINUANCE OF DISTRICTS.--

A. At any time after five years from the organization of a watershed district, twenty-five or more landowners within a district or, if less than fifty landowners are involved, a majority of the landowners in the district may file a petition with the board of supervisors and the board of directors requesting that the existence of the district be discontinued. The petition shall state the reasons for discontinuance and that all obligations of the district have been met.

B. After giving notice as defined in Section 73-20-8 NMSA 1978, the board of supervisors may conduct hearings on the petition as may be necessary to assist it in making a determination.

C. Within sixty days after petition is filed, a referendum shall be held under the supervision of the board of supervisors as provided in Section 73-20-14 NMSA 1978. No informalities in the conduct of the referendum or in any matters relating to the referendum shall invalidate it or its result if notice of the referendum has been given substantially as provided in Subsection B of this section.

D. If a majority of the votes cast in the referendum favor the discontinuance of the district and it is found that all obligations have been met, the board of supervisors shall make a determination that the watershed district shall be discontinued. A copy of the determination shall be certified by the clerk of the county involved for recording. After recording, the certification shall be filed with the New Mexico department of agriculture."

HOUSE BILL 683, AS AMENDED

CHAPTER 229

CHAPTER 229, LAWS 2003

AN ACT

RELATING TO MUNICIPALITIES AND COUNTIES; PROVIDING AUTHORITY FOR TRANSFERS OF DEVELOPMENT RIGHTS.

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

Section 1. A new section of Chapter 3, Article 18 NMSA 1978 is enacted to read:

"PURPOSE--TRANSFER OF DEVELOPMENT RIGHTS.--

A. The purpose of this section is to:

- (1) clarify an application of existing authority;
- (2) provide guidelines for counties and municipalities to regulate transfers of development rights consistent with comprehensive plans;
- (3) encourage the conservation of ecological, agricultural and historical land; and
- (4) require public notification of transfers of development rights.

B. A municipality or county may, by ordinance, provide for voluntary transfer of all or partial development rights from one parcel of land to another parcel of land.

C. The ordinance shall identify on a zoning map areas from which development rights may be transferred and areas to which development rights may be transferred.

D. The ordinance shall provide for:

- (1) the voluntary transfer of a development right from one parcel of land to increase the intensity of development of another parcel of land;
- (2) joint powers agreements, if applicable, for administration of transfers of development rights across jurisdictional boundaries;
- (3) the method of transfer of development rights, including methods of determining the accounting for the rights transferred;
- (4) the reasonable rules to effect and control transfers and ensure compliance with the provisions of the ordinance; and
- (5) public notification to the areas to which development rights may be transferred.

E. Transference of a development right shall be in writing and executed by the owner of the parcel from which the development right is being transferred and acknowledged by the transferor. A development right shall not be subject to condemnation.

F. As used in this section, "development right" means the rights permitted to a lot, parcel or area of land under a zoning ordinance or local law respecting permissible use, area, density or height of improvements executed thereon, and development rights may be calculated and allocated in accordance with density or

height limitations or any criteria that will effectively quantify a development right in a reasonable and uniform manner.

G. Nothing in this section shall be construed to authorize a municipality or a county to impair existing property rights."

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 693, AS AMENDED

CHAPTER 230

CHAPTER 230, LAWS 2003

AN ACT

RELATING TO MUNICIPALITIES; AMENDING THE MUNICIPAL CODE TO PROVIDE AUTHORITY FOR MUNICIPALITIES TO CHARGE YARD WASTE FEES AGAINST REAL PROPERTY.

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

Section 1. Section 3-48-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-49-1) is amended to read:

"3-48-1. REFUSE--YARD WASTE--DEFINITIONS.--As used in Chapter 3, Article 48 NMSA 1978:

A. "refuse" means any garbage, rejected or waste food, offal, swill, carrion, ashes, dirt, slop, waste paper, trash, rubbish, waste or unwholesome material of any kind; and

B. "yard waste" means yard clippings, grass cuttings, yard cleanings, fallen trees, tree limbs, slash and pine needles."

Section 2. Section 3-48-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-49-3) is amended to read:

"3-48-3. REFUSE--AUTHORITY TO COLLECT AND DISPOSE--FEE.--

A. A municipality may, by ordinance, provide for the collection and disposal of refuse by:

(1) the municipality;

(2) contract; or

(3) any other manner deemed suitable by the municipality.

B. A municipality may appoint or contract with a refuse collector and prescribe the duties and compensation of a refuse collector.

C. A municipality may require each person owning or controlling real property to pay a reasonable fee for the collection and disposal of refuse and shall determine if the municipality or the refuse collector shall collect the fee for the collection and disposal of refuse. The refuse collection fee shall only be charged against real property that is occupied or has been previously occupied.

D. A municipality providing for the collection of refuse may require any person owning or controlling real property to pay the refuse collection fee whether or not the refuse collection service is used by the person owning or controlling real property.

E. A municipality providing for the collection and disposal of yard waste may require any person owning or controlling real property to pay a yard waste collection and disposal fee."

HOUSE BILL 737, AS AMENDED

CHAPTER 231

CHAPTER 231, LAWS 2003

AN ACT

RELATING TO SENIORS; PROHIBITING DISCRIMINATION BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE AGAINST SENIORS OLDER THAN SIXTY YEARS OF AGE WHO VOLUNTEER AND MEET CERTAIN STANDARDS.

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

Section 1. A new section of the Human Rights Act is enacted to read:

"PROHIBITING DISCRIMINATION AGAINST SENIORS IN CERTAIN VOLUNTEER SERVICE.--The state or a political subdivision of the state shall not exclude a person older than sixty years of age from volunteer service as long as the

person is physically, mentally and professionally capable of performing the services involved. For the purposes of this section, "professionally capable" means having the ability to demonstrate reasonable proficiency and having any relevant certification in accordance with the laws, rules or technical standards that may govern the particular profession."

Section 2. EFFECTIVE DATE.--The effective date of the

provisions of this act is July 1, 2003.

HOUSE BILL 761

CHAPTER 232

CHAPTER 232, LAWS 2003

AN ACT

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR RECEIPTS OF A TRADE-SUPPORT COMPANY LOCATED WITHIN TWENTY MILES OF A PORT OF ENTRY ON NEW MEXICO'S BORDER WITH MEXICO.

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

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS--TRADE-SUPPORT COMPANY IN A BORDER ZONE.--

A. The receipts of a trade-support company may be deducted from gross receipts if:

(1) the trade-support company first locates in New Mexico within twenty miles of a port of entry on New Mexico's border with Mexico on or after July 1, 2003 but before July 1, 2008;

(2) the receipts are received by the company within a five-year period beginning on the date the trade-support company locates in New Mexico and the receipts are derived from its business activities and operations at its border zone location; and

(3) the trade-support company employs at least two employees in New Mexico.

B. As used in this section:

(1) "employee" means an individual, other than an individual who:

(a) bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary of the estate or trust; or

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer, or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust;

(2) "port of entry" means an international port of entry in New Mexico at which customs services are provided by the United States customs service; and

(3) "trade-support company" means a customs brokerage firm or a freight forwarder."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 843, AS AMENDED

CHAPTER 233

CHAPTER 233, LAWS 2003

AN ACT

RELATING TO BOARDS; AMENDING AND ENACTING SECTIONS OF THE ENGINEERING AND SURVEYING PRACTICE ACT TO CLARIFY AND AUGMENT THE CURRENT LAW.

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

Section 1. Section 61-23-2 NMSA 1978 (being Laws 1987, Chapter 336, Section 2, as amended) is amended to read:

"61-23-2. DECLARATION OF POLICY.--The legislature declares that it is a matter of public safety, interest and concern that the practices of engineering and surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practices of engineering and surveying. In order to safeguard life, health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that he is qualified to so practice and shall be licensed as provided in the Engineering and Surveying Practice Act. It is unlawful for any person to practice, offer to practice, engage in the business, act in the capacity of, advertise or use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional, licensed engineer or surveyor unless that person is licensed or exempt under the provisions of the Engineering and Surveying Practice Act. A person who engages in the business or acts in the capacity of a professional engineer or professional surveyor in New Mexico, except as otherwise provided in

Sections 61-23-22 and 61-23-27.10 NMSA 1978, with or without a New Mexico license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 23 NMSA 1978. The practice of engineering or surveying shall be deemed a privilege granted by the board based on the qualifications of the individual as evidenced by the licensee's certificate, which shall not be transferable."

Section 2. Section 61-23-3 NMSA 1978 (being Laws 1987, Chapter 336, Section 3, as amended) is amended to read:

"61-23-3. DEFINITIONS.--As used in the Engineering and Surveying Practice Act:

- A. "approved" or "approval" means acceptable to the board;
- B. "board" means the state board of licensure for professional engineers and surveyors;

C. "conviction" or "convicted" means any final adjudication of guilt, whether pursuant to a plea of nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

D. "engineer" means a person who is qualified to practice engineering by reason of his intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience;

E. "engineering" or "practice of engineering" means any creative or engineering work that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering work. The "practice of engineering" may include the use of photogrammetric methods to derive topographical and other data. The "practice of engineering" does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

F. "engineering committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering;

G. "engineer intern" means a person who has qualified for, taken and passed an examination in the fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

H. "fund" means the professional engineers' and surveyors' fund;

I. "incidental practice" means the performance of other professional services that are related to a licensee's work as an engineer;

J. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity;

K. "professional development" means education by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge;

L. "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer" means a person who is licensed by the board to practice the profession of engineering;

M. "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a licensee in that profession, and by sealing or signing the documents, the professional engineer or surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met;

N. "surveying" or "practice of surveying" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

(1) the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

(2) the monumenting of property boundaries and for the platting and layout of lands and subdivisions thereof;

(3) the application of photogrammetric methods used to derive topographic and other data;

(4) the establishment of horizontal and vertical controls for surveys for design, topographic surveys, including photogrammetric methods, construction surveys of engineering and architectural public works projects; and

(5) the preparation and perpetuation of maps, records, plats, field notes and property descriptions;

O. "surveying committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of surveying;

P. "surveyor" or "professional surveyor" means a person who is qualified to practice surveying by reason of his intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying, including the principles and

methods of surveying acquired by education and experience, and who is licensed by the board to practice surveying;

Q. "surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act; and

R. "surveying work" means the work performed in the practice of surveying.

The board recognizes that there may be an overlap between the work of engineers and surveyors in obtaining survey information for the planning and design of an engineering project. A registered professional engineer who has primary engineering responsibility and control of an engineering project may perform an engineering survey. Engineering surveys may be performed by a licensed professional engineer on a project for which he is providing engineering design services. Engineering surveys include topographic surveying activities required to support the sound conception, planning, design, construction, maintenance and operation of said projects but exclude the surveying of real property for establishment of land boundaries, rights of way, easements and the dependent or independent surveys or resurveys of the public land system."

Section 3. Section 61-23-14.1 NMSA 1978 (being Laws 1993, Chapter 218, Section 12, as amended) is amended to read:

"61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER--
REQUIREMENTS.--

A. Licensure as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application in which it shall be demonstrated that the applicant:

(1) is of good moral character and reputation;

(2) has five references, three of whom shall be licensees practicing in the branch of engineering for which the applicant is applying and who have personal knowledge of the applicant's engineering experience and reputation. The use of nonlicensed engineer references having personal knowledge of the applicant's engineering experience and reputation other than professional engineers may be accepted by the board provided a satisfactory written explanation is given; and meets one of the following requirements:

(a) is certified as an engineer intern and has at least four years of board-approved engineering experience after graduation from a board-approved engineering curriculum;

(b) is certified as an engineer intern, and has, including the two years for engineer intern certification, at least six years of board-approved engineering experience after graduation from a board-approved, four-year engineering technology curriculum accredited by the technical accreditation commission of the accreditation board for engineering and technology;

(c) has obtained a doctorate degree in an engineering discipline recognized by the board and has a minimum of four years of board-approved engineering experience subsequent to the awarding of the degree;

(d) has obtained a master's degree in an engineering discipline recognized by the board from a board-approved program and has a minimum of six years of engineering experience subsequent to the awarding of the degree; or

(e) has graduated from a board-approved, four-year engineering curriculum and has twelve or more years of engineering experience acceptable to the board.

B. After the applicant's application is approved by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional engineer.

C. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional engineer upon action of the board.

D. An applicant may be licensed by endorsement or comity if:

(1) he is currently licensed as an engineer in the District of Columbia, another state, a territory or a possession of the United States, provided the licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; or

(2) he is currently licensed as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act and can satisfactorily demonstrate to the board his competence in current engineering standards and procedures."

Section 4. A new section of the Engineering and Surveying Practice Act, Section 61-23-23 NMSA 1978, is enacted to read:

"61-23-23. AUTHORITY TO INVESTIGATE--CIVIL PENALTIES FOR UNLICENSED PERSONS--ENGINEERING.--

A. The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act and who acts in the capacity of a professional engineer within the meaning of the Engineering and Surveying Practice Act.

B. If after the hearing the board determines that based on the evidence the person committed a violation pursuant to the Engineering and Surveying Practice Act, it shall, in addition to any other sanction, action or remedy, issue an order that imposes a civil penalty up to five thousand dollars (\$5,000) per violation.

C. In determining the amount of the civil penalty it imposes, the board shall consider:

- (1) the seriousness of the violation;
- (2) the economic benefit to the violator that was generated by the violator's commission of the violation;
- (3) the violator's history of violations; and
- (4) any other considerations the board deems appropriate.

D. A person aggrieved by the board's decision may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor, and upon conviction the person shall be sentenced pursuant to Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction."

Section 5. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.15 NMSA 1978, is enacted to read:

"61-23-27.15. AUTHORITY TO INVESTIGATE--CIVIL PENALTIES FOR UNLICENSED PERSONS--SURVEYING.--

A. The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act and who acts in the capacity of a professional surveyor within the meaning of the Engineering and Surveying Practice Act.

B. If after the hearing the board determines that based on the evidence the person committed a violation under the Engineering and Surveying Practice Act, it

shall, in addition to any other sanction, action or remedy, issue an order that imposes a civil penalty up to five thousand dollars (\$5,000) per violation.

C. In determining the amount of the civil penalty it imposes, the board shall consider:

- (1) the seriousness of the violation;
- (2) the economic benefit to the violator that was generated by the violator's commission of the violation;
- (3) the violator's history of violations; and
- (4) any other considerations the board deems appropriate.

D. A person aggrieved may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor and upon conviction the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction."

HOUSE BILL 923, AS AMENDED

CHAPTER 234

CHAPTER 234, LAWS 2003

AN ACT

RELATING TO HISTORIC LANDSCAPES; ENACTING THE HISTORIC LANDSCAPE ACT TO ESTABLISH AND PRESERVE LANDSCAPES OF HISTORIC AND CULTURAL SIGNIFICANCE; CREATING A HISTORIC LANDSCAPE TRUST; PROVIDING FOR A FUTURE STATE SYSTEM OF HISTORIC LANDSCAPES; AUTHORIZING SOLICITATION OF GIFTS AND GRANTS TO FUND THE FIRST TWO YEARS OF THE TRUST; MAKING AN APPROPRIATION OF THOSE FUNDS TO THE TRUST.

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

Section 1. SHORT TITLE.--This act may be cited as the "Historic Landscape Act".

Section 2. DEFINITIONS.--As used in the Historic Landscape Act:

A. "board" means the board of trustees of the historic landscape trust;

B. "historic landscape" means a historic manmade or cultural landscape:

(1) that is limited in scope;

(2) generally comprising a plaza, square, park, garden, terrace, streetscape, estate, grounds of a building or other open space designed formally or informally; and

(3) that has contributed to the cultural history of its time; and

C. "trust" means the historic landscape trust created by the Historic Landscape Act.

Section 3. HISTORIC LANDSCAPE TRUST CREATED.--The "historic landscape trust" is created. It is a public nonprofit corporation and shall be organized pursuant to the Nonprofit Corporation Act.

Section 4. BOARD OF TRUSTEES.--

A. The trust shall be governed by the board. The members of the initial board shall be:

(1) two individuals who are New Mexico licensed landscape architects;

(2) an attorney licensed to practice law in the state;

(3) a New Mexico certified public accountant;

(4) three New Mexico residents who have demonstrated their interest in and knowledge about historic landscapes;

(5) two New Mexico residents who are active members of garden clubs;

(6) the state cultural affairs officer or his designee; and

(7) the director of tourism or his designee.

B. The terms of the initial board members are for two years. Thereafter, the board shall be selected in accordance with the articles of incorporation and bylaws of the trust.

C. Vacancies on the initial board shall be filled by appointment of the governor. Thereafter, vacancies shall be filled in accordance with the articles of incorporation and bylaws of the trust.

Section 5. ARTICLES OF INCORPORATION AND BYLAWS.--The initial board shall prepare and file articles of incorporation and bylaws. The articles shall state as the purposes of the trust:

A. the preservation of significant historic landscapes in the state;

B. the identification of sites in the state deserving of inclusion in the historic landscape system; and

C. the development of a historic landscape system that provides opportunities for persons to appreciate and better understand the history and development of the state.

Section 6. EXECUTIVE DIRECTOR.--The bylaws of the trust shall provide for the employment of an executive director and shall specify his duties.

Section 7. FUNDING.--The initial board shall seek private and public funding for the trust and is authorized to accept gifts and grants of both private and public funds. The "historic landscape trust fund" is created in the state treasury. All funds accepted by the initial board shall be deposited in the fund. The fund is appropriated to the initial board and may be expended as authorized by vouchers drawn by the chair of the initial board on warrants drawn by the department of finance and administration. Expenditures are authorized in fiscal years 2004 and 2005 only for organization expenses of the trust and per diem and mileage pursuant to the Per Diem and Mileage Act for the appointed members of the initial board.

Section 8. TEMPORARY PROVISION.--The initial board of trustees of the historic landscape trust shall report to the first session of the forty-seventh legislature on the date it convenes. The report shall include:

A. copies of the articles of incorporation and bylaws of the trust;

B. a ten-year plan for implementing a historic landscape system in the state:

(1) that shall rely entirely upon acquisition of historic landscapes by purchase or gift;

(2) that shall not include a historic landscape in the system without the consent of all persons owning property rights in the historic landscape; and

(3) that shall not place limitations or restrictions on a person's use or freedom of alienation of a historic landscape by designation or otherwise without the free consent of the person; and

C. strategies and recommendations for funding the trust in fiscal year 2006 and subsequent fiscal years.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 956, AS AMENDED

CHAPTER 235

CHAPTER 235, LAWS 2003

AN ACT

RELATING TO HEALTH; CREATING A HEALTH CARE PROVIDER LICENSING AND CREDENTIALING TASK FORCE UNDER THE NEW MEXICO HEALTH POLICY COMMISSION; PROVIDING FOR DUTIES AND MEMBERSHIP; PROVIDING FOR AN INFORMATION TECHNOLOGY PROJECT MANAGER; AUTHORIZING THE USE OF CERTAIN FUNDS.

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

Section 1. TEMPORARY PROVISION--FINDINGS.--The legislature finds that licensed professionals in New Mexico, particularly those in the health care field, are severely burdened by multiple layers of mandatory credentialing obligations, costing them, their patients and third-party payers needless expense and wasted time. Further,

the legislature notes that New Mexico's health care licensure provisions may be contributing to harmful delays in access to health care throughout the state, particularly in areas with acute professional shortages. The legislature believes that efforts begun pursuant to House Joint Memorial 61 of the second session of the forty-fifth legislature and the continued cooperation among respective licensing boards, the regulation and licensing department, various statewide professional associations and societies, insurers and national accrediting and standard setting organizations will produce a system satisfactory to all concerned while maintaining the primary goal of ensuring the health and safety of New Mexico residents.

Section 2. TASK FORCE CREATED--RESPONSIBILITIES--PARTICIPANTS--FUNDING.--

A. The "health care providers licensing and credentialing task force" is created under the direction of the New Mexico health policy commission to study and make recommendations for the consolidation and simplification of the health care licensure processes. The task force shall make recommendations for the establishment of a web site portal for licensure to facilitate and complement or replace the present system conducted by individual health care provider boards and for a central database for credentialing information to simplify and eliminate duplication of effort.

B. The task force shall study and make recommendations to the superintendent of insurance on health care provider credentialing issues and obstacles to one-time efforts by providers to meet all necessary requirements to practice independently or as a provider for any appropriately licensed health care organization or facility. The task force shall study and recommend, if practicable, use of credentialing expertise developed by a statewide association of hospitals.

C. The task force shall include participation by the New Mexico health policy commission; the department of health; the New Mexico board of medical examiners; the board of nursing; other health care provider boards; the regulation and licensing department; the insurance division of the public regulation commission; the human services department; the office of the attorney general; other affected state agencies; members of the health care industry, including statewide associations and societies representing providers, hospitals and other affected facilities; insurers; and other third-party payers as well as health care advocates and members of the public.

D. The New Mexico health policy commission, together with the New Mexico board of medical examiners and the board of nursing, shall hire an information technology project manager to work under the commission to design, implement and

maintain a web site portal for licensure and a central database for credentialing of health care providers.

Section 3. SUPERINTENDENT OF INSURANCE--DUTIES.--The superintendent of insurance shall adopt rules pursuant to the health care providers licensing and credentialing task force recommendations to ensure that third-party payer credentialing requirements facilitate New Mexico providers' ability to satisfy all credentialing requirements, including those by a national committee on quality assurance, as efficiently as possible. Rules adopted shall require primary credential verification no more frequently than every three years and shall be scheduled to coincide with national accrediting organizations and hospital and managed care organizations' credentialing requirements.

Section 4. HUMAN SERVICES DEPARTMENT--MANAGED CARE CONTRACT CREDENTIALING PROVISIONS.--The human services department shall negotiate with medicaid contractors to ensure that the contractors' credentialing requirements are coordinated with other credentialing processes required of individual providers.

Section 5. A new Section 61-3-27.1 NMSA 1978 is enacted to read:

"61-3-27.1. BOARD OF NURSING FUND--AUTHORIZED USE.--Pursuant to Subsection D of Section 61-3-27 NMSA 1978, the board shall authorize expenditures from unexpended and unencumbered cash balances in the board of nursing fund to support an information technology project manager to develop, implement and maintain a web site portal for licensure and a central database for credentialing of health care providers."

Section 6. A new Section 61-6-31.1 NMSA 1978 is enacted to read:

"61-6-31.1. BOARD OF MEDICAL EXAMINERS FUND--AUTHORIZED USE.--Pursuant to Subsection D of Section 61-6-31 NMSA 1978, the board shall authorize expenditures from unexpended and unencumbered cash balances in the board of medical examiners fund to support an information technology project manager to develop, implement and maintain a web site portal for licensure and a central database for credentialing of health care providers."

CHAPTER 236

CHAPTER 236, LAWS 2003

AN ACT

RELATING TO STATE PLANNING; CREATING THE NEW MEXICO HORIZONS TASK FORCE; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. LEGISLATIVE FINDINGS AND PURPOSE.--

A. The legislature finds that the growing complexity and interdependence of the modern world as demonstrated by, among other factors, the changing workforce education needs, global environmental change, the aging population, international trade, the ever-growing number of working poor and the demand for fundamental changes in the role of government require that government policymakers establish a long-range, strategic planning process to assist them in setting policy direction and goals for state and local governments.

B. The legislature also finds that alternative budgeting and evaluation processes may be used to ensure that the policies and goals established through the strategic planning process are implemented.

C. It is the purpose of this act to create a "New Mexico horizons task force" that shall recommend to the legislature and the governor a comprehensive strategic planning process for New Mexico, which shall involve all segments of New Mexico, including state, local and tribal governments and individuals from the private and public sectors from the different geographic areas of the state.

Section 2. NEW MEXICO HORIZONS TASK FORCE--CREATION--TERMINATION.--The "New Mexico horizons task force" is created. The task force shall function from the date of its appointment until December 31 prior to the first session of the forty-seventh legislature.

Section 3. MEMBERSHIP--APPOINTMENT--VACANCIES.--

A. The New Mexico horizons task force shall be composed of twenty-two members appointed as follows:

(1) three members from the house of representatives appointed by the speaker of the house, of whom no more than two shall be from the same party;

(2) three members from the senate, appointed by the president pro tempore of the senate, of whom no more than two shall be from the same party;

(3) four members appointed by the governor from the executive branch; and

(4) eight members of the public, of whom two shall be appointed by the speaker of the house, two shall be appointed by the president pro tempore of the senate and four shall be appointed by the governor. The speaker of the house, the president pro tempore of the senate and the governor shall coordinate their appointments of public members to ensure that the different geographical areas of the state are represented, that the members reflect diverse expertise in the private and public sectors, including public and private finance, business, education, government and public planning and administration, and that no more than four shall be from the same party.

B. The speaker of the house, the president pro tempore of the senate, the governor and the chief justice of the supreme court shall serve as ex-officio members.

C. The governor, in consultation with the speaker of the house and the president pro tempore of the senate, shall appoint the chair of the task force.

D. The public members of the task force shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

Section 4. DUTIES.--After their appointment, members of the New Mexico horizons task force shall develop a work plan and budget for the ensuing interim. The work plan and budget shall be submitted to the New Mexico legislative council for approval. Upon approval of the work plan and budget by the legislative council, the task force shall:

A. in cooperation with the governor's office of policy and planning, study and review strategic planning processes in other states and determine the value such processes would have in New Mexico;

B. recommend to the legislature and the governor a comprehensive strategic planning process for New Mexico that represents citizens of the state from all sectors of the economy and from all geographic areas of the state in the goal setting for the state;

C. in coordination with the legislative finance committee, the legislative education study committee and the department of finance and administration, review and assess how performance-based budgeting and other budgeting processes can be

improved to better assist in the implementation of any strategic plan developed for the state; and

D. undertake other activities and make other recommendations related to strategic planning as deemed necessary by the New Mexico horizons task force.

Section 5. REPORT.--The New Mexico horizons task force shall make a report of its findings and recommendations for the consideration of the first session of the forty-seventh legislature. The report and suggested legislation shall be made available to the New Mexico legislative council and the governor on or before December 31 preceding that session.

Section 6. STAFF.--The staff for the New Mexico horizons task force shall be provided by the legislative council service, the legislative finance committee, the legislative education study committee, the governor's office and the department of finance and administration. Additionally, the legislative council service may contract at the direction of the task force for strategic planning assistance.

Section 7. APPROPRIATION.--One hundred thousand dollars (\$100,000) is appropriated from legislative cash balances to the legislative council service for expenditure in fiscal years 2003 through 2005 for the purpose of paying the salaries, contracts and expenses of the technical, legal and clerical assistants used in carrying out the provisions of this act and for reimbursing the per diem and mileage expenses of the New Mexico horizons task force and the tax study committee. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to legislative cash balances. Payments from the appropriation shall be made by warrant issued by the department of finance and administration upon vouchers signed by the director of the legislative council service or the director's authorized representative.

Section 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

WITH EMERGENCY CLAUSE

SIGNED APRIL 6, 2003

CHAPTER 237

CHAPTER 237, LAWS 2003

AN ACT

RELATING TO CORRECTIONS; ESTABLISHING A DEMONSTRATION,
PRISON-BASED DRUG REHABILITATION PROGRAM.

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

Section 1. ESTABLISHING A DEMONSTRATION, PRISON-BASED DRUG REHABILITATION PROGRAM.--

A. The corrections department shall establish a demonstration, prison-based drug rehabilitation program for inmates.

B. The department is authorized to collaborate with a private organization that has expertise in establishing a prison-based drug rehabilitation program that addresses:

- (1) drug rehabilitation;
- (2) education;
- (3) self-respect; and
- (4) life skills.

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 974

CHAPTER 238

CHAPTER 238, LAWS 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AUTHORIZING CERTAIN SHORT-TERM BONDS TO BE ISSUED PURSUANT TO
THE SEVERANCE TAX BONDING ACT IN FISCAL YEAR 2003 FOR THE PURPOSE
OF CORRECTING DEFICIENCIES IN PUBLIC SCHOOLS PURSUANT TO THE
PUBLIC SCHOOL CAPITAL OUTLAY ACT.

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

**Section 1. Section 7-27-14 NMSA 1978 (being Laws 1961, Chapter 5,
Section 11, as amended) is amended to read:**

"7-27-14. AMOUNT OF TAX--SECURITY FOR BONDS.--

A. The legislature shall provide for the continued assessment, levy, collection and deposit into the severance tax bonding fund of the tax or taxes upon natural resource products severed and saved from the soil of the state that, together with such other income as may be deposited to the fund, will be sufficient to produce an amount that is at least the amount necessary to meet annual debt service charges on all outstanding severance tax bonds and supplemental severance tax bonds.

B. Except as otherwise specifically provided by law, the state board of finance shall issue no severance tax bonds unless the aggregate amount of severance tax bonds outstanding, and including the issue proposed, can be serviced with not more than fifty percent of the annual deposits into the severance tax bonding fund, as determined by the deposits during the preceding fiscal year.

C. The state board of finance shall issue no supplemental severance tax bonds with a term that extends beyond the fiscal year in which the bonds are issued unless the aggregate amount of severance tax bonds and supplemental severance tax bonds outstanding, and including the issue proposed, can be serviced with not more than sixty-two and

one-half percent of the annual deposits into the severance tax bonding fund, as determined by the deposits during the preceding fiscal year.

D. Except as otherwise specifically provided by law, the state board of finance may issue supplemental severance tax bonds with a term that does not extend beyond the fiscal year in which they are issued if the debt service on such supplemental severance tax bonds when added to the debt service previously paid or scheduled to be paid during that fiscal year on severance tax bonds and supplemental severance tax bonds does not exceed eighty-seven and one-half percent of the deposits into the severance tax bonding fund during the preceding fiscal year.

E. The provisions of this section shall not be modified by the terms of any severance tax bonds or supplemental severance tax bonds hereafter issued."

Section 2. TEMPORARY PROVISION--SHORT-TERM BONDS AUTHORIZED FOR FISCAL YEAR 2003.--In addition to the bonds issued pursuant to Section 7-27-14 NMSA 1978 and notwithstanding the limitations of that section, in compliance with the Severance Tax Bonding Act, in fiscal year 2003 the state board of finance may issue and sell supplemental severance tax bonds with a term that does not extend beyond the fiscal year in which they are issued in an amount not exceeding forty million dollars (\$40,000,000) when the public school capital outlay council certifies by resolution the need for the issuance of the bonds. The proceeds from the sale of the bonds are appropriated to the public school capital outlay fund for the purpose of making awards of grant assistance for correcting deficiencies pursuant to the Public School Capital Outlay Act; provided, however, that no supplemental severance tax bonds shall be issued pursuant to this section:

A. until all other severance tax bonds and supplemental severance tax bonds to be issued in fiscal year 2003 have been issued; and

B. unless the balance in the severance tax bonding fund as of the date that the bonds are issued is greater than the sum of:

(1) the debt service on the supplemental severance tax bonds to be issued pursuant to this section;

(2) the debt service scheduled to be paid during the remainder of the fiscal year on all outstanding severance tax bonds and supplemental severance tax bonds; and

(3) the amount necessary to meet all principal and interest payments on outstanding bonds payable from the severance tax bonding fund on the next two ensuing semiannual payment dates.

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 992

CHAPTER 239

CHAPTER 239, LAWS 2003

AN ACT

RELATING TO LICENSING; ENACTING THE IGNITION INTERLOCK LICENSING ACT; ALLOWING INDIVIDUALS WHO HAVE A LICENSE REVOKED OR DENIED FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS TO APPLY FOR AN IGNITION INTERLOCK LICENSE; PROVIDING PENALTIES; 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. A new section of Chapter 66, Article 5 NMSA 1978 is enacted to read:

"SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Ignition Interlock Licensing Act"."

Section 2. A new section of Chapter 66, Article 5 NMSA 1978 is enacted to read:

"DEFINITIONS.--As used in the Ignition Interlock Licensing Act:

A. "denied" means having an instructor's permit, driver's license or provisional license denied for driving while under the influence of intoxicating liquor or drugs, pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978;

B. "ignition interlock device" means a regularly calibrated device, approved by the traffic safety bureau, that regulates the operation of a motor vehicle by measuring an operator's blood alcohol level before allowing the operator to start the vehicle and that periodically tests the operator's blood alcohol level while he operates the vehicle;

C. "ignition interlock license" means a driver's license issued to a person by the division that allows that person to operate a motor vehicle with an ignition interlock device after that person's instructor's permit, driver's license or provisional license has been revoked or denied. The division shall clearly mark an ignition interlock license to distinguish it from other driver's licenses; and

D. "revoked" means having an instructor's permit, driver's license or provisional license revoked for driving while under the influence of intoxicating liquor or drugs, pursuant to the provisions of Sections 66-8-102 or 66-8-111 NMSA 1978."

Section 3. A new section of Chapter 66, Article 5 NMSA 1978 is enacted to read:

"IGNITION INTERLOCK LICENSE--REQUIREMENTS-- EXCLUSIONS.--

A. A person whose instructor's permit, driver's license or provisional license has been revoked or denied may apply for an ignition interlock license from the division.

B. An applicant for an ignition interlock license shall:

(1) provide proof of installation of the ignition interlock device by a traffic safety bureau-approved ignition interlock installer on any vehicle the applicant drives; and

(2) sign an affidavit acknowledging that:

(a) operation by the applicant of any vehicle that is not equipped with an ignition interlock device is subject to penalties for driving with a revoked license; and

(b) the applicant shall maintain the ignition interlock device and keep up-to-date records in the motor vehicle showing required service and calibrations and be able to provide the records upon request.

C. A person who has been convicted of homicide by vehicle or great bodily injury by vehicle while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-101 NMSA 1978, shall not be issued an ignition interlock license."

Section 4. A new section of Chapter 66, Article 5 NMSA 1978 is enacted to read:

"PENALTIES.--A person who is issued an ignition interlock license and operates a vehicle that is not equipped with an ignition interlock device in violation of the Ignition Interlock Licensing Act shall be subject to the penalties provided in Section 66-5-39 NMSA 1978."

Section 5. Section 32A-2-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 48, as amended) is amended to read:

"32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT OFFENDER.--

A. At the conclusion of the dispositional hearing, the court may make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with the child's parents, siblings and any other person who may significantly affect the child's best interests;

(2) the child's adjustment to his home, school and community;

(3) the mental and physical health of all individuals involved;

(4) the wishes of the child as to his custodian;

(5) the wishes of the child's parents as to the child's custody;

(6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the predisposition report; and

(8) the ability of the parents to care for the child in the home.

B. If a child is found to be delinquent, the court may impose a fine not to exceed the fine that could be imposed if the child were an adult and may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) any disposition that is authorized for the disposition of a neglected or abused child, in accordance with the Abuse and Neglect Act;

(2) transfer legal custody to the department, an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the department as a juvenile reception facility. The department shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child. The judge may include recommendations for placement of the child. Commitments are subject to limitations and modifications set forth in Section 32A-2-23 NMSA 1978. The types of commitments include:

(a) a short-term commitment of one year;

(b) a long-term commitment for no more than two years in a long-term facility for the care and rehabilitation of adjudicated delinquent children;

(c) if the child is a delinquent offender who committed one of the criminal offenses set forth in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to age twenty-one, unless sooner discharged; or

(d) if the child is a youthful offender, a commitment to age twenty-one, unless sooner discharged;

(3) place the child on probation under those conditions and limitations as the court may prescribe;

(4) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32A-2-4 NMSA 1978 for a period not to exceed fifteen days within a three hundred sixty-five day time period;

(5) if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA 1978, the court shall only enter a judgment placing the child on probation or ordering restitution or imposing a fine not to exceed the fine that could be imposed if the child were an adult or any combination of these dispositions; or

(6) if a child is found to be delinquent solely on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, transfer custody of the child to the department for a period not to exceed six months without further order of the court; provided that this transfer shall not be made unless the court first determines that the department is able to provide or contract for adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.

C. When the child is an Indian child, the Indian child's cultural needs shall be considered in the dispositional judgment and reasonable access to cultural practices and traditional treatment shall be provided.

D. No child found to be delinquent shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

E. Whenever the court vests legal custody in an agency, institution or department, it shall transmit with the dispositional judgment copies of the clinical reports, predisposition study and report and other information it has pertinent to the care and treatment of the child.

F. Prior to any child being placed in the custody of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard.

G. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be

revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock license pursuant to the Ignition Interlock Licensing Act, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

H. In addition to any other disposition pursuant to this section or any other penalty provided by law, when a child is adjudicated delinquent on the basis of Paragraph (7) of Subsection A of Section 32A-2-3 NMSA 1978, the child shall perform the mandatory community service set forth in Section 30-15-1.1 NMSA 1978. When a child fails to completely perform the mandatory community service, the name and address of the child's parent or legal guardian shall be published in a newspaper of general circulation, accompanied by a notice that he is the parent or legal guardian of a child adjudicated delinquent for committing graffiti."

Section 6. Section 32A-2-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 51, as amended) is amended to read:

"32A-2-22. CONTINUANCE UNDER SUPERVISION WITHOUT JUDGMENT--
CONSENT DECREE--DISPOSITION.--

A. At any time after the filing of a delinquency petition and before the entry of a judgment, the court may, on motion of the children's court attorney or that of counsel for the child, suspend the proceedings and continue the child under supervision in the child's own home under terms and conditions negotiated with probation services and agreed to by all the parties affected. The court's order continuing the child under supervision under this section shall be known as a "consent decree".

B. If the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object but an objection is made by the children's court attorney after consultation with probation services, the court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

C. A consent decree shall remain in force for six months unless the child is discharged sooner by probation services. Prior to the expiration of the six-month period and upon the application of probation services or any other agency supervising the child under a consent decree, the court may extend the decree for an additional six months in

the absence of objection to extension by the child. If the child objects to the extension, the court shall hold a hearing and make a determination on the issue of extension.

D. If either prior to discharge by probation services or expiration of the consent decree the child allegedly fails to fulfill the terms of the decree, the children's court attorney may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same manner as proceedings on petitions to revoke probation. If the child is found to have violated the terms of the consent decree, the court may:

(1) extend the period of the consent decree; or

(2) make any other disposition that would have been appropriate in the original proceeding.

E. A child who is discharged by probation services or who completes a period under supervision without reinstatement of the original delinquency petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the child for damages arising from the child's conduct.

F. A judge who pursuant to this section elicits or examines information or material about a child that would be inadmissible in a hearing on the allegations of the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency if:

(1) a consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies the allegations; or

(2) a consent decree is granted but the delinquency petition is subsequently reinstated.

G. If a consent decree has been entered pursuant to the filing of a delinquency petition based on Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978 for a child who is fifteen years of age or older, a condition of the consent decree agreement may be the denial of the child's driving privileges or the revocation of the child's driver's license for a period of ninety days. For the second or subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the entry by the court of a decree consenting to the revocation or denial of the child's driver's license or driving privileges, the court shall send the decree to the motor vehicle division of the taxation and revenue department. Upon receipt of the decree from the court consenting to the denial or revocation of the child's driving privileges or driver's license, the director of the motor vehicle division of the taxation and revenue department shall revoke or deny the delinquent child's driver's license or driving privileges. Nothing in this section

shall prohibit the delinquent child from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock license pursuant to the Ignition Interlock Licensing Act, and nothing in this section precludes the delinquent child's participation in an appropriate educational, counseling or rehabilitation program.

H. The court shall not order more than one consent decree for a child within a two-year period."

Section 7. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended) is amended to read:

"66-5-5. PERSONS NOT TO BE LICENSED.--The division shall not issue a driver's license under the Motor Vehicle Code to any person:

A. who is under the age of eighteen years, except the division may, in its discretion, issue:

(1) an instruction permit to a person fifteen years of age or over who is enrolled in and attending or has completed a driver education course that includes a DWI education and prevention component approved by the bureau or offered by a public school;

(2) a provisional license to any person fifteen years and six months of age or older:

(a) who has completed a driver education course approved by the bureau or offered by a public school that includes a DWI education and prevention component and has had an instruction permit for at least six months; and

(b) who has successfully completed a practice driving component;

(3) a driver's license to any person sixteen years and six months of age or older:

(a) who has had a provisional license for the twelve-month period immediately preceding the date of the application for the driver's license;

(b) who has complied with restrictions on that license;

(c) who has not been convicted of a traffic violation that was committed during the ninety days prior to applying for a driver's license; and

(d) who has not been adjudicated for an offense involving the use of alcohol or drugs during that period and who has no pending adjudications

alleging an offense involving the use of alcohol or drugs at the time of his application;
and

(4) to any person thirteen years of age or older who passes an examination prescribed by the division, a license restricted to the operation of a motorcycle, provided:

(a) the motor is not in excess of one hundred cubic centimeters displacement;

(b) no holder of an initial license may carry any other passenger while driving a motorcycle; and

(c) the director approves and certifies motorcycles as not in excess of one hundred cubic centimeters displacement and by rule provides for a method of identification of such motorcycles by all law enforcement officers;

B. whose license or driving privilege has been suspended or denied, during the period of suspension or denial, or to any person whose license has been revoked, except as provided in Section 66-5-32 NMSA 1978 and the Ignition Interlock Licensing Act;

C. who is an habitual drunkard, an habitual user of narcotic drugs or an habitual user of any drug to a degree that renders him incapable of safely driving a motor vehicle;

D. who, within any ten-year period, is three times convicted of driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug regardless of whether the convictions are under the laws or ordinances of this state or any municipality or county of this state or under the laws or ordinances of any other state, the District of Columbia or any governmental subdivision thereof, except as provided in the Ignition Interlock Licensing Act. Ten years after being so convicted for the third time, the person may apply to any district court of this state for restoration of the license, and the court, upon good cause being shown, may order restoration of the license applied for; provided that the person has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in the ten-year period prior to his request for restoration of his license. Upon issuance of the order of restoration, a certified copy shall immediately be forwarded to the division, and if the person is otherwise qualified for the license applied for, the three previous convictions shall not prohibit issuance of the license applied for. Should the person be subsequently once convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs, the division shall revoke his license for five years, after which time he may apply for restoration of his license as provided in this subsection;

E. who has previously been afflicted with or who is suffering from any mental disability or disease that would render him unable to drive a motor vehicle with

safety upon the highways and who has not, at the time of application, been restored to health;

F. who is required by the Motor Vehicle Code to take an examination, unless he has successfully passed the examination;

G. who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

H. when the director has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare; or

I. as a motorcycle driver who is less than eighteen years of age and who has not presented a certificate or other evidence of having successfully completed a motorcycle driver education program licensed or offered in conformance with rules of the bureau."

Section 8. Section 66-5-29 NMSA 1978 (being Laws 1978, Chapter 35, Section 251, as amended) is amended to read:

"66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

A. The division shall immediately revoke the instruction permit, driver's license or provisional license of a driver upon receiving a record of the driver's adjudication as a delinquent for or conviction of any of the following offenses, whether the offense is under any state law or local ordinance, when the conviction or adjudication has become final:

(1) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) any offense rendering a person a "first offender" as defined in the Motor Vehicle Code, if that person does not attend a driver rehabilitation program pursuant to Subsection E of Section 66-8-102 NMSA 1978;

(3) any offense rendering a person a "subsequent offender" as defined in the Motor Vehicle Code;

(4) any felony in the commission of which a motor vehicle is used;

(5) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(6) perjury or the making of a false affidavit or statement under oath to the division under the Motor Vehicle Code or under any other law relating to the ownership or operation of motor vehicles; or

(7) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of twelve months.

B. Except as provided in the Ignition Interlock Licensing Act, a person whose license has been revoked under this section, except as provided in Subsection C, D or E of this section, shall not be entitled to apply for or receive a new license until the expiration of one year from the date of the last application on which the revoked license was surrendered to and received by the division, if no appeal is filed, or one year from the date that the revocation is final and he has exhausted his rights to an appeal.

C. A person who upon adjudication as a delinquent or conviction is subject to license revocation under this section for an offense pursuant to which he was also subject to license revocation pursuant to Section 66-8-111 NMSA 1978 shall have his license revoked for that offense for a combined period of time equal to one year.

D. Upon receipt of an order from a court pursuant to Section 32A-2-19 NMSA 1978 or Subsection G of Section 32A-2-22 NMSA 1978, the division shall revoke the driver's license or driving privileges for a period of time in accordance with these provisions.

E. Upon receipt from a district court of a record of conviction for the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or of a conviction for a conspiracy or an attempt to commit that offense, the division shall revoke the driver's licenses or driving privileges of the convicted person. A person whose license or privilege has been revoked pursuant to the provisions of this subsection shall not be entitled to apply for or receive any new license or privilege until the expiration of one year from the date of the last application on which the revoked license was surrendered to and received by the division, if no appeal is filed, or one year from the date that the revocation is final and the person has exhausted his rights to an appeal."

Section 9. Section 66-5-32 NMSA 1978 (being Laws 1978, Chapter 35, Section 254, as amended) is amended to read:

"66-5-32. PERIOD OF SUSPENSION OR REVOCATION.--

A. The division shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one year except as permitted under Subsection C of this section and Sections 66-5-5 and 66-5-39 NMSA 1978.

B. Except as provided in the Ignition Interlock Licensing Act, a person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have the license or privilege renewed or restored unless the revocation was for a cause that has been removed, except that after the expiration of the period specified in Subsection B of Section 66-5-29 NMSA 1978 from the date on which the revoked license was surrendered to and received by the division, the person may make application for a new license as provided by law.

C. The suspension period for failure to appear or failure to remit the penalty assessment shall, at the discretion of the director, be extended indefinitely subject to the provisions of Subsection B of Section 66-5-30 NMSA 1978."

Section 10. Section 66-5-35 NMSA 1978 (being Laws 1978, Chapter 35, Section 257, as amended by Laws 2001, Chapter 47, Section 1 and also by Laws 2001, Chapter 242, Section 1) is amended to read:

"66-5-35. LIMITED DRIVING PRIVILEGE UPON SUSPENSION OR REVOCATION--HEARING--REVIEW.--

A. Upon suspension or revocation of a person's driver's license following conviction or adjudication as a delinquent under any law, ordinance or rule relating to motor vehicles, a person may apply to the department for a license or permit to drive, limited to use allowing him to engage in gainful employment, to attend school or to attend a court-ordered treatment program, except that the person shall not be eligible to apply:

(1) for a limited commercial driver's license or an ignition interlock license in lieu of a revoked or suspended commercial driver's license;

(2) for a limited license when the person's driver's license was revoked pursuant to the provisions of the Implied Consent Act, except as provided in Subsection B of this section or the Ignition Interlock Licensing Act;

(3) for a limited license when the person's license was revoked pursuant to the provisions of Section 66-8-102 NMSA 1978, except as provided in the Ignition Interlock Licensing Act;

(4) for a limited license when the person's driver's license is denied pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978, except as provided in the Ignition Interlock Licensing Act; or

(5) for a limited license when the person's driver's license was revoked pursuant to a conviction for committing homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978.

B. A person whose driver's license is revoked for the first time pursuant to the provisions of Paragraph (1) or (2) of Subsection C of Section 66-8-111 NMSA 1978 may apply for and shall receive a limited license, permit or an ignition interlock license thirty days after suspension or revocation of his license if the person pays every fee, meets the criteria for limited driving privileges established in rules by the department and provides the department with documentation of the following:

(1) that the person is enrolled in a DWI school approved by the traffic safety bureau and an approved alcohol screening program; and

(2) proof of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act;

C. Upon receipt of a fully completed application that complies with statutes and rules for a limited license or an ignition interlock license and payment of the fee specified in this subsection, the department shall issue a limited license, ignition interlock license or permit to the applicant showing the limitations specified in the approved application. For each limited license, ignition interlock license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars (\$45.00), which shall be transferred to the state highway and transportation department. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The state highway and transportation department shall coordinate with the department of health to ensure that there is no program duplication. The limited license or permit to drive may be suspended as provided in Section 66-5-30 NMSA 1978.

D. The department, within twenty days of denial of an application for a limited driver's license or permit pursuant to this section, shall afford the applicant a hearing in the county in which the applicant resides, unless the department and the licensee agree that the hearing may be held in some other county. The department may extend the twenty-day period, provided that the extension is in writing and made no later than fifteen days after receipt of an application. Upon hearing, the hearing officer designated by the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The hearing officer shall make specific findings as to whether the applicant has shown proof of financial responsibility for the future and enrollment in an approved DWI school and an approved alcohol screening program and meets established uniform criteria for limited driving privileges adopted by rule of the department. The hearing officer shall enter an order either approving or denying the applicant's request for a limited license or permit to drive. If any of the specific findings set forth in this subsection are not found by the hearing officer, the applicant's request for a limited license or permit shall not be approved.

E. A person adversely affected by an order of the hearing officer may seek review within thirty days in the district court in the county in which he resides. On

review, it is for the court to determine only whether the applicant met the requirements in this section for issuance of a limited license or permit to drive."

Section 11. EMERGENCY.--It is necessary for the public

peace, health and safety that this act take effect
immediately.

SENATE JUDICIARY COMMITTEE SUBSTITUTE
FOR SENATE BILL 501, WITH EMERGENCY CLAUSE
SIGNED APRIL 6, 2003

CHAPTER 240

CHAPTER 240, LAWS 2003

AN ACT

RELATING TO DRUG COURTS; ESTABLISHING PROGRAM FEES; CREATING FUNDS; MAKING APPROPRIATIONS.

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

Section 1. A new section of Chapter 34, Article 6 NMSA 1978 is enacted to read:

"DRUG COURT FEES--FUND CREATED.--

A. In addition to any other fees collected in the district court, a district court that has established an adult drug court may assess and collect from participants a "drug court fee" of fifty dollars (\$50.00) a month. Program fee requirements may be satisfied by community service at the federal minimum wage.

B. Drug court fees shall be deposited in the

"drug court fund" of a specific judicial district in the state treasury. The judicial district shall administer money in the fund to offset client service costs of the drug court program, consistent with standards approved by the supreme court. Money in the fund shall be expended on warrants of the secretary of finance and administration upon

vouchers signed by the court administrator or his authorized representative. Balances in the fund shall not revert to the general fund at the end of a fiscal year."

Section 2. A new section of Chapter 34, Article 9 NMSA 1978 is enacted to read:

"MAGISTRATE DRUG COURT FUND--CREATED.--The "magistrate drug court fund" is created in the state treasury. The administrative office of the courts shall administer money in the fund to offset client service costs of drug court programs in magistrate courts, consistent with standards approved by the supreme court. Money in the fund shall be expended on warrants of the secretary of finance and administration upon vouchers signed by the court administrator or his authorized representative. Balances in the fund shall not revert to the general fund at the end of a fiscal year."

Section 3. MAGISTRATE COURT--DRUG COURT FEE--MONTHLY REMITTANCES.--

A. A magistrate court that has an adult drug court program may assess and collect from participants a "drug court fee" of fifty dollars (\$50.00) a month. Program fee requirements may be satisfied by community service at the federal minimum wage. Proceeds from the drug court fee shall be deposited in the magistrate drug court fund.

B. Each magistrate court shall pay monthly to the administrative office of the courts, not later than the date established by rule of the director of the administrative office, the amount collected pursuant to Subsection A of this section, which shall be credited to the magistrate drug court fund. The administrative office shall return to each magistrate a written receipt itemizing all money received and credited to the fund.

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 91, AS AMENDED

CHAPTER 241

CHAPTER 241, LAWS 2003

AN ACT

RELATING TO BOATING; ENACTING THE BOATING WHILE INTOXICATED ACT; PRESCRIBING PENALTIES FOR OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AUTHORIZING TESTING OF A PERSON'S

BLOOD OR BREATH FOR ALCOHOL OR DRUGS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Boating While Intoxicated Act".

Section 2. DEFINITIONS.--As used in the Boating While Intoxicated Act:

A. "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;

B. "conviction" means an adjudication of guilt and does not include imposition of a sentence;

C. "motorboat" means any boat, personal watercraft or other type of vessel propelled by machinery, whether or not machinery is the principle source of propulsion. "Motorboat" includes a vessel propelled or designed to be propelled by a sail, but does not include a sailboard or a windsurf board. "Motorboat" does not include a houseboat or any other vessel that is moored on the water, but not moving on the water; and

D. "operate" means to physically handle the controls of a motorboat that is moving on the water.

Section 3. OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to operate a motorboat.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely operating a motorboat to operate a motorboat.

C. It is unlawful for a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to operate a motorboat.

D. Aggravated boating 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 operating a motorboat;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motorboat while under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Boating While Intoxicated 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 pursuant to 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. The offender shall be ordered by the court to attend a boating safety course approved by the national association of state boating law administrators. An offender ordered by the court to attend a boating safety course shall provide the court with proof that the offender successfully completed the course within seven months of his conviction or prior to completion of his probation, whichever period of time is less. In addition to those penalties, when an offender commits aggravated boating while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail and may be fined not more than seven hundred fifty dollars (\$750). 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 pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or subsequent conviction pursuant to 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 seven hundred fifty dollars (\$750), or both; provided that if the sentence is suspended in whole or in part, the period of probation shall not exceed one year. In addition to those penalties, when an offender commits aggravated boating while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail and may be fined not more than one thousand dollars (\$1,000).

Section 4. GUILTY PLEAS--LIMITATIONS.--When a complaint or information alleges a violation of Section 3 of the Boating While Intoxicated Act, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 3 of that act, and no other

disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to that act disclose that the blood or breath of the person charged contains an alcohol concentration of eight one hundredths or more.

Section 5. MUNICIPAL AND COUNTY ORDINANCES--UNLAWFUL ALCOHOL CONCENTRATION LEVEL FOR BOATING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--No municipal or county ordinance prohibiting the operation of a motorboat while under the influence of intoxicating liquor or drugs shall be enacted that provides for an unlawful alcohol concentration level that is different than the alcohol concentration levels provided in Section 3 of the Boating While Intoxicated Act.

Section 6. BLOOD-ALCOHOL TESTS--PERSONS QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL LIABILITY.-
-Only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from a person in the performance of a blood-alcohol or drug test. A physician, nurse, technician or technologist who withdraws blood from a person in the performance of a blood-alcohol or drug test that has been directed by a law enforcement officer, or by a judicial or probation officer, shall not be held liable in a civil or criminal action for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence, nor shall a person assisting in the performance of the test, or a hospital wherein blood is withdrawn in the performance of the test, be subject to civil or criminal liability for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence.

Section 7. BLOOD-ALCOHOL TEST--LAW ENFORCEMENT, JUDICIAL OR PROBATION OFFICER UNAUTHORIZED TO MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES AUTHORIZED BY LAW.--Nothing in the Boating While Intoxicated Act is intended to authorize a law enforcement officer, or a judicial or probation officer, to make an arrest or direct the performance of a blood-alcohol or drug test, except in the

performance of his official duties or as otherwise authorized by law.

Section 8. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST.--

A. A person who operates a motorboat within this state shall be deemed to have given consent, subject to the provisions of the Boating While Intoxicated Act, to chemical tests of his blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978 as determined by a law enforcement officer, or for the purposes of determining the drug or alcohol content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was operating a motorboat while under the influence of an intoxicating liquor or drug.

B. The arrested person shall be advised by a law enforcement officer that failure to submit to a chemical test may be introduced into evidence in court and that the court, upon conviction, may impose increased penalties for the person's failure to submit to a chemical test.

C. A test of blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been operating a motorboat while under the influence of an intoxicating liquor or drug.

D. A person who operates a motorboat in this state and who is involved in a fatal boating incident shall be deemed to have given consent, subject to the provisions of the Boating While Intoxicated Act, to mandatory chemical tests of his blood or breath or both, as determined by a law enforcement officer and approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978.

Section 9. CONSENT OF PERSON INCAPABLE OF REFUSAL NOT WITHDRAWN.--A person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by the Boating While Intoxicated Act, and the test designated by the law enforcement officer may be administered.

Section 10. ADMINISTRATION OF CHEMICAL TEST--PAYMENT OF COSTS--ADDITIONAL TESTS.--

A. Only the persons authorized by the Boating While Intoxicated Act shall withdraw blood from a person for the purpose of determining its alcohol or drug content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to a test performed at the direction of a law enforcement officer.

C. Upon the request of the person tested, full information concerning the test performed at the direction of the law enforcement officer shall be made available to him as soon as it is available from the person performing the test.

D. The agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test.

E. If a person exercises his right under Subsection B of this section to have a chemical test performed upon him by a person of his own choosing, the cost of that test shall be paid by the agency represented by the law enforcement officer at whose direction a chemical test was administered pursuant to Section 8 of the Boating While Intoxicated Act.

Section 11. USE OF TESTS IN CRIMINAL OR CIVIL ACTIONS-- LEVELS OF INTOXICATION--MANDATORY CHARGING.--

A. The results of a test performed pursuant to the Boating While Intoxicated Act may be introduced into evidence in a civil action or criminal action arising out of the acts alleged to have been committed by the person tested for operating a motorboat while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of five one hundredths or less, it shall be presumed that the person was not under the influence of intoxicating liquor; or

(2) an alcohol concentration of more than five one hundredths but less than eight one hundredths, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's blood or breath may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

C. When the blood or breath of the person tested contains an alcohol concentration of eight one hundredths or more, the arresting officer shall charge him with a violation of Section 3 of the Boating While Intoxicated Act.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. The alcohol concentration in a person's blood or breath shall be determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. In a prosecution pursuant to the provisions of the Boating While Intoxicated Act, it is a rebuttable presumption that a person is in violation of the provisions of that act if he has an alcohol concentration of eight one hundredths or more in his blood or breath as determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. If the chemical test is administered more than three hours after the alleged boating while under the influence of intoxicating liquor, the test result is admissible as evidence of the alcohol concentration in the person's blood or breath at the time of the alleged boating and the trier of fact shall determine what weight to give the test result.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of operating a motorboat while under the influence of intoxicating liquor or drugs, the trial judge shall be required to inquire into past convictions of the person for operating a motorboat while under the influence of intoxicating liquor or drugs before sentence is entered in the matter.

Section 12. MOTORBOATS--INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--FEE UPON CONVICTION.--

A. A person convicted of a violation of the Boating While Intoxicated Act shall be assessed by the court, in addition to any other fee or fine, a fee of sixty-five dollars (\$65.00) to defray the costs of chemical and other tests used to determine the influence of intoxicating liquor or drugs.

B. All fees collected pursuant to the provisions of this section shall be transmitted monthly to the crime laboratory fund. All balances in the crime laboratory fund collected pursuant to this section are appropriated to the administrative office of the courts for payment upon invoice to the scientific laboratory division of the department of health for the costs of chemical and other tests used to determine the influence of intoxicating liquor or drugs.

C. Payment of funds out of the crime laboratory fund of fees collected pursuant to this section shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the department of finance and administration.

Section 13. EDUCATIONAL PROGRAM.--The state parks division of the energy, minerals and natural resources department shall develop and implement a program to advertise and further educate the boating public about the dangers of boating while under the influence of alcohol or drugs and the penalties associated with a conviction pursuant to the provisions of the Boating While Intoxicated Act.

Section 14. Section 24-1-22 NMSA 1978 (being Laws 1981, Chapter 165, Section 1) is amended to read:

"24-1-22. SCIENTIFIC LABORATORY DIVISION--TESTING METHODS--CERTIFICATION.--

A. The scientific laboratory division of the department of health is authorized to promulgate and approve satisfactory techniques or methods to test persons believed to be operating a motor vehicle or a motorboat under the influence of drugs or alcohol and to issue certification for test operators and their instructors that shall be subject to termination or revocation at the discretion of the scientific laboratory division. The scientific laboratory division is further authorized to establish or approve quality control measures for alcohol breath testing and to establish or approve standards of training necessary to ensure the qualifications of individuals conducting these analyses or collections.

B. The scientific laboratory division shall establish criteria and specifications for equipment, training, quality control, testing methodology, blood-breath relationships and the certification of operators, instructors and collectors of breath samples.

C. All laboratories analyzing breath, blood or urine samples pursuant to the provisions of the Implied Consent Act and the Boating While Intoxicated Act shall be certified by the scientific laboratory division. The certification shall be granted in accordance with the rules and regulations of the scientific laboratory division and shall be subject to termination or revocation for cause."

Section 15. Section 66-12-11 NMSA 1978 (being Laws 1959, Chapter 338, Section 10, as amended) is amended to read:

"66-12-11. PROHIBITED OPERATION.--

A. A person shall not operate any motorboat or vessel or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger the life or property of any person.

B. A person shall not operate any vessel, not defined as a motorboat pursuant to the provisions of the Boating While Intoxicated Act, or manipulate any water skis, surfboard or similar device while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana."

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 434, AS AMENDED

CHAPTER 242

CHAPTER 242, LAWS 2003

AN ACT

RELATING TO EMPLOYMENT; CLARIFYING DEFINITIONS IN THE EMPLOYEE LEASING ACT TO ENSURE PROPER CLASSIFICATION.

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

Section 1. Section 60-13A-2 NMSA 1978 (being Laws 1993, Chapter 162, Section 2) is amended to read:

"60-13A-2. DEFINITIONS.--As used in the Employee Leasing Act:

A. "applicant" means a person applying for registration as an employee leasing contractor;

B. "client" means a person who obtains workers through an employee leasing arrangement;

C. "department" means the regulation and licensing department;

D. "employee leasing arrangement" means any arrangement in which a client contracts with an employee leasing contractor for the contractor to provide leased workers to the client; provided, "employee leasing arrangements" does not include temporary workers;

E. "employee leasing contractor" means any person who provides leased workers to a client in New Mexico through an employee leasing arrangement;

F. "leased worker" means a worker provided to a client through an employee leasing arrangement; provided that if a worker works and should be classified in any construction class or in any oil and gas well service or drilling class pursuant to provisions of or regulations adopted under the New Mexico Insurance Code, the worker shall be presumed to be a leased worker and the employee leasing contractor that provides the worker shall comply with the provisions of the Employee Leasing Act;

G. "person" means an individual or any other legal entity;

H. "temporary services employer" means an employing unit that contracts with clients or customers to provide workers to perform services for the client or customer and performs all of the following functions:

(1) negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality and price of the services;

(2) determines assignments of workers, even though workers retain the right to refuse specific assignments;

(3) retains the authority to reassign or refuse to reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer;

(4) assigns the worker to perform services for a client or customer;

(5) sets the rate of pay for the worker, whether or not through negotiation; and

(6) pays the worker directly; and

I. "temporary worker" means a worker employed or provided by a temporary services employer to support or supplement another's work force in special work situations, such as employee absences, temporary skill shortages, temporary provision of specialized professional skills, seasonal workloads and special temporary assignments, including the production of motion pictures, television programs and other commercial media projects; provided that if a worker who is employed or provided by a temporary services employer works and should be classified in any construction class or in any oil and gas well service or drilling class pursuant to provisions of or regulations adopted under the New Mexico Insurance Code, the worker shall be presumed to be a temporary worker and the temporary services employer that provides the worker shall comply with the provisions of the Employee Leasing Act."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE JUDICIARY COMMITTEE

SUBSTITUTE FOR SENATE BILL 483

CHAPTER 243

CHAPTER 243, LAWS 2003

AN ACT

RELATING TO EMERGENCY MEDICAL SERVICES; EXPANDING THE SCOPE OF THE EMERGENCY MEDICAL SERVICES ACT; AMENDING AND ENACTING SECTIONS OF THE EMERGENCY MEDICAL SERVICES ACT; PROVIDING FOR A PENALTY.

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

Section 1. Section 24-10B-2 NMSA 1978 (being Laws 1983, Chapter 190, Section 2, as amended) is amended to read:

"24-10B-2. PURPOSE.--The purpose of the Emergency Medical Services Act is to enhance and regulate a comprehensive emergency medical services system in the state as set forth in that act. Nothing in the Emergency Medical Services Act shall be construed to preclude a local emergency medical services system from adopting standards that are more stringent than those authorized by the Emergency Medical Services Act."

Section 2. Section 24-10B-3 NMSA 1978 (being Laws 1993, Chapter 161, Section 2) is amended to read:

"24-10B-3. DEFINITIONS.--As used in the Emergency Medical Services Act:

A. "academy" means an emergency medical services training program administered through the department of emergency medicine of the university of New Mexico school of medicine;

B. "advance directive" means a written instruction, such as a living will, durable power of attorney for health care or emergency medical services do not resuscitate form recognizable under state law and relating to the provision of health care when an individual is incapacitated;

C. "air ambulance service" means any governmental or private service that provides air transportation specifically designed to accommodate the medical needs of a person who is ill, injured or otherwise mentally or physically incapacitated and who requires in-flight medical supervision;

D. "approved emergency medical services training program" means an emergency medical services training program that is sponsored by a post-secondary educational institution, accredited by a national educational accrediting organization for emergency medical services or active in the accreditation process, and is approved by the joint organization on education committee and participates in the joint organization on education committee;

E. "bureau" means the injury prevention and emergency medical services bureau of the public health division of the department;

F. "certified emergency medical service" means an organization that meets minimum standards to provide emergency services and is approved by the bureau, including emergency medical dispatch agencies, pre-hospital or interfacility care services and special event services organized to provide emergency medical services;

G. "critical incident stress management program" means a program of preventive education and crisis intervention intended to reduce the negative effects of critical stress on emergency responders;

H. "department" means the department of health;

I. "emergency medical dispatch" means an advanced form of dispatch communications used to improve emergency medical services response to medical and traumatic emergencies that utilizes specially trained emergency medical dispatchers, in accordance with an emergency medical dispatch priority reference system and the department-approved scopes of practice;

J. "emergency medical dispatcher" means a person who is trained and licensed pursuant to Subsection F of Section 24-10B-4 NMSA 1978 to receive calls for emergency medical assistance, provide pre-arrival medical instructions, dispatch emergency medical assistance and coordinate its response;

K. "emergency medical services" means the services rendered by providers in response to an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury;

L. "emergency medical services first responder" means a person who is licensed by the department and who functions within the emergency medical services system to provide initial emergency aid;

M. "emergency medical services system" means a coordinated system of health care delivery that responds to the needs of the sick and injured and includes emergency medical services;

N. "emergency medical technician" means a provider who has been licensed by the department to provide patient care;

O. "health care facility" means a hospital, clinic or other entity licensed or approved by the department;

P. "injury prevention" means to promote and implement efforts to reduce the risk and severity of intentional and unintentional injuries;

Q. "medical direction" means guidance or supervision provided by a physician to a provider or emergency medical services system and that may include authority over and responsibility for emergency medical dispatch, direct patient care and transport of patients, arrangements for medical control and all other aspects of patient care delivered by a provider;

R. "paramedic" means a provider licensed at that level by the department to provide patient care;

S. "physician" means a doctor of medicine or doctor of osteopathy who is licensed or otherwise authorized to practice medicine or osteopathic medicine in New Mexico;

T. "protocol" means a predetermined, written medical care plan and includes standing orders;

U. "provider" means a person who has been licensed by the department to provide patient care pursuant to the Emergency Medical Services Act;

V. "regional office" means an emergency medical services planning and development agency formally recognized and supported by the bureau;

W. "secretary" means the secretary of health;

X. "special skills" means a set of procedures or therapies that are beyond the scope of practice of a given level of licensure and that have been approved by the medical direction committee for use by a specified provider; and

Y. "state emergency medical services medical director" means a physician designated by the department to provide overall medical direction to the statewide emergency medical services system, whose duties include serving as a liaison to the medical community and chairing the medical direction committee."

Section 3. Section 24-10B-4 NMSA 1978 (being Laws 1983, Chapter 190, Section 4, as amended) is amended to read:

"24-10B-4. BUREAU--DUTIES.--The bureau is designated as the lead agency for the emergency medical services system, including injury prevention, and shall establish and maintain a program for regional planning and development, improvement, expansion and direction of emergency medical services throughout the state, including:

A. design, development, implementation and coordination of emergency medical services communications systems to join the personnel, facilities and equipment of a given region or system that will allow for medical direction;

B. provision of technical assistance to the public regulation commission for further development and implementation of standards for certification of ambulance services, vehicles and equipment;

C. development of requirements for the collection of data and statistics to evaluate the availability, operation and quality of providers in the state;

D. adoption of rules for emergency medical services medical direction upon the recommendation of the medical direction committee;

E. approval of continuing education programs for emergency medical services personnel;

F. adoption of rules pertaining to the training and licensure of emergency medical dispatchers and their instructors;

G. adoption of rules based upon the recommendations of a trauma advisory committee, for implementation and monitoring of a statewide, comprehensive trauma care system, including:

(1) minimum standards for designation or retention of designation as a trauma center or a participating trauma facility;

(2) pre-hospital care management guidelines for the triage and transportation of traumatized persons;

(3) establishment for interfacility transfer criteria and transfer agreements;

(4) standards for collection of data relating to trauma system operation, patient outcome and trauma prevention; and

(5) creation of a state trauma care plan;

H. adoption of rules, based upon the recommendations of the air transport advisory committee, for the certification of air ambulance services;

I. adoption of rules pertaining to authorization of providers to honor advance directives, such as emergency medical services do not resuscitate forms, to withhold or terminate care in certain pre-hospital or interfacility circumstances, as guided by local medical protocols;

J. operation of a critical incident stress management program for emergency providers utilizing specifically trained volunteers who shall be considered public employees for the purposes of the Tort Claims Act when called upon to perform their duties;

K. adoption of rules to establish a cardiac arrest targeted response program pursuant to the Cardiac Arrest Response Act, including registration of automated external defibrillator programs, maintenance of equipment, data collection, approval of automated external defibrillator training programs and a schedule of automated external defibrillator program registration fees;

L. adoption of rules for the administration of an emergency medical services certification program for certified emergency medical services; and

M. promoting, developing, implementing, coordinating and evaluating risk reduction and injury prevention systems."

Section 4. Section 24-10B-5 NMSA 1978 (being Laws 1983, Chapter 190, Section 5, as amended) is amended to read:

"24-10B-5. LICENSURE REQUIRED--PENALTY.--

A. The department shall by rule adopt and enforce licensure requirements, including minimum standards for training, continuing education and disciplinary actions consistent with the Uniform Licensing Act, for all persons who provide emergency medical services within the state, irrespective of whether the services are remunerated. The rules shall include authorization for the bureau to issue at least annually an updated list of skills, techniques and medications approved for use at each level of licensure. The secretary may waive licensure requirements as needed during a declared emergency.

B. Licensed emergency medical technicians may function within health care facilities under their licensure and approved New Mexico emergency medical services scope of practice. Nothing in this subsection shall prohibit a health care facility from assigning additional duties and responsibilities in accordance with law. This subsection shall not expand the New Mexico emergency medical services scope of practice under the emergency medical technician's license.

C. In addition to the requirements specified in Subsection A of this section, the department may:

(1) prohibit the use of "emergency medical dispatcher", "emergency medical technician", "emergency medical services first responder", "paramedic" or similar terms connoting expertise in providing emergency medical services by any person not licensed or certified under the Emergency Medical Services Act;

(2) deny, suspend or revoke licensure in accordance with the provisions of the Uniform Licensing Act; and

(3) establish a schedule of reasonable fees for application, examination or licensure and regular renewal thereof.

D. Any person who represents himself to be an "emergency medical dispatcher", "emergency medical technician-basic", "emergency medical technician-intermediate", "emergency medical technician-paramedic", "emergency medical services first responder" or "paramedic", or who uses similar terms connoting expertise in providing emergency medical services while not currently licensed under the Emergency Medical Services Act is guilty of a misdemeanor."

Section 5. Section 24-10B-5.1 NMSA 1978 (being Laws 1993, Chapter 161, Section 5) is amended to read:

"24-10B-5.1. LICENSING COMMISSION ESTABLISHED.--

A. The secretary shall appoint an "emergency medical services licensing commission", which shall be staffed by the bureau and composed of one lay person, three emergency medical technicians, one from each level of licensure, and three physicians, at least two of whom shall have expertise in emergency medicine and who are appointed from a list proposed by the New Mexico chapter of the American college of emergency physicians.

B. The composition of the emergency medical services licensing commission shall reflect geographic diversity and both public and private interests. The members shall serve for three-year staggered terms. The duties of and procedures for the emergency medical services licensing commission shall be delineated in rules promulgated pursuant to Subsection A of Section 24-10B-5 NMSA 1978. Such duties include:

(1) providing a forum for the receipt of public comment regarding emergency medical services licensing matters;

(2) oversight of the bureau's licensure functions;

(3) receiving complaints, directing investigations and authorizing the initiation of actions by the bureau regarding contemplated refusal to grant initial licensure and for disciplinary actions against licensees; and

(4) the granting of waivers, for good cause shown, of rules pertaining to licensure renewal.

C. The emergency medical services licensing commission may compel the production of books, records and papers pertinent to any investigation authorized by the Emergency Medical Services Act and may seek enforcement of any subpoena so issued through the district court in the county in which the custodian of the document is located in camera.

D. The emergency medical services licensing commission shall meet as needed, but not less frequently than semiannually. The emergency medical services licensing commission shall be subject to the provisions of the Per Diem and Mileage Act."

Section 6. Section 24-10B-6 NMSA 1978 (being Laws 1983, Chapter 190, Section 6, as amended) is amended to read:

"24-10B-6. TREATMENT AUTHORIZED.--

A. Notwithstanding the provisions of the Medical Practice Act, Sections 61-10-1 through 61-10-22 NMSA 1978 or the Nursing Practice Act, any person licensed by the bureau may render emergency medical services commensurate with his level of licensure, as medically indicated.

B. Individuals licensed pursuant to the provisions of the Medical Practice Act, Sections 61-10-1 through

61-10-22 NMSA 1978 or the Nursing Practice Act are not required to be licensed under the Emergency Medical Services Act."

Section 7. Section 24-10B-7 NMSA 1978 (being Laws 1983, Chapter 190, Section 7, as amended) is amended to read:

"24-10B-7. COMMITTEES ESTABLISHED.--

A. The secretary shall appoint a statewide emergency medical services advisory committee to advise the bureau in carrying out the provisions of the Emergency Medical Services Act. The advisory committee shall include, at a minimum, representatives from the state medical society, the state emergency medical technicians' association, the state firefighters' association, the New Mexico ambulance association, the state nurses' association, the association of public safety communications organization/national emergency numbers association, the lead state agency for public safety and emergency preparedness, the state emergency services council, the New Mexico health and hospital systems association, the university of New Mexico health sciences center, the state fire chiefs' association, a consumer,

emergency medical service regional offices and other interested provider and consumer groups as determined by the secretary. The advisory committee shall establish appropriate subcommittees, including a trauma advisory committee and an air transport advisory committee.

B. The joint organization on education committee shall be composed, at a minimum, of the director and medical director of the academy and each approved emergency medical services training program or their designee, the state emergency medical services medical director, the bureau chief or his designee, who shall serve without vote, each emergency medical services regional office training coordinator and one provider from the three highest levels of licensure, who are appointed by the secretary from a list proposed by the statewide emergency medical services advisory committee. The duties of the joint organization on education committee include:

(1) developing minimum curricula content for approved emergency medical services training programs;

(2) establishing minimum standards for approved emergency medical services training programs;

(3) reviewing and approving the applications of organizations seeking to become approved emergency medical services training programs; and

(4) developing minimum qualifications for and maintaining a list of instructors for each of the approved emergency medical services training programs.

C. The secretary shall appoint a medical direction committee to advise the bureau on matters relating to medical direction. The state emergency medical services medical director shall be a member of the committee and shall act as its chairman. The medical direction committee shall include, at a minimum, a physician representative experienced in pre-hospital medical care selected from a list proposed by the New Mexico chapter of the American college of emergency physicians, a physician representative from the academy, one physician from each of the emergency medical services geographic regions, one physician with pediatric emergency medicine expertise, one physician representing emergency medical dispatchers and one provider from the three highest levels of licensure. Members shall be selected to represent both public and private interests. The duties of the medical direction committee include:

(1) reviewing the medical appropriateness of all rules proposed by the bureau;

(2) reviewing and approving the applications of providers for special skills authorizations;

(3) assisting in the development of rules pertaining to medical direction; and

(4) reviewing at least annually a list of skills, techniques and medications approved for use at each level of licensure that shall be approved by the secretary and issued by the bureau.

D. The committees created in this section are subject to the provisions of the Per Diem and Mileage Act, to the extent that funds are available for that purpose.

E. Any decision that the bureau proposes to make contrary to the recommendation of any committee created in this section shall be communicated in writing to that committee. Upon the request of that committee, the decision shall be submitted for reconsideration to the director of the public health division of the department and subsequently to the secretary. Any decision made pursuant to a request for reconsideration shall be communicated in writing by the department to the appropriate committee."

Section 8. Section 24-10B-9 NMSA 1978 (being Laws 1983, Chapter 190, Section 9, as amended) is amended to read:

"24-10B-9. EMERGENCY FIRST AID.--Nothing in the Emergency Medical Services Act shall prevent fire and rescue services, public safety organizations and other trained units or individuals from rendering emergency first aid to the public commensurate with their training. Nothing in the Emergency Medical Services Act shall be construed to supersede other statutory authority permitting the rendering of first aid."

Section 9. Section 24-10B-9.1 NMSA 1978 (being Laws 1993, Chapter 161, Section 11) is amended to read:

"24-10B-9.1. EMERGENCY TRANSPORTATION.--Any person may be transported to an appropriate health care facility by an emergency medical technician, under medical direction, when the emergency medical technician makes a good faith judgment that the person is incapable of making an informed decision about his own safety or need for medical attention and is reasonably likely to suffer disability or death without the medical intervention available at such a facility."

Section 10. Section 24-10B-12 NMSA 1978 (being Laws 1993, Chapter 161, Section 7) is amended to read:

"24-10B-12. ACADEMY--DUTIES.--The academy is designated as the lead emergency medical services training agency. Its duties include:

A. administering formal emergency medical services training conducted in New Mexico, other than training provided by other approved emergency medical services training programs;

B. furthering the knowledge of emergency medical services education;

C. securing a physician as its medical director to advise it in medical matters and to serve as liaison to the state emergency medical services medical director and the medical community as a whole;

D. supporting, promoting and conducting scholarly research regarding emergency medical services; and

E. reporting and publishing emergency medical services information."

Section 11. A new section of the Emergency Medical Services Act is enacted to read:

"RECORDS CONFIDENTIALITY.--

A. Any files or records in the possession of the bureau, a regional office or a provider containing identifying information about individuals requesting or receiving treatment or other health services and any unsubstantiated complaints received by the bureau regarding any provider shall be confidential and not subject to public inspection.

B. Such files, records and complaints may be subject to subpoena for use in any pending cause in any administrative proceeding or in any of the courts of this state, unless otherwise provided by law."

Section 12. A new section of the Emergency Medical Services Act is enacted to read:

"APPROVED TRAINING PROGRAMS.--Approved emergency medical services training programs for providers are an integral part of the emergency medical services system and the programs shall include:

A. improving and expanding emergency medical services within regions through focused emergency medical services educational activities;

B. furthering the knowledge base of emergency medical services education; and

C. securing physicians as medical directors to advise approved training programs in medical matters and to serve as liaison to the state emergency medical services medical director and the medical community as a whole."

Section 13. A new section of the Emergency Medical Services Act is enacted to read:

"REGIONAL OFFICES--DUTIES.--

A. Regional offices may be established by the department to assist the bureau to provide regional planning and development, improvement, expansion and direction of emergency medical services and injury prevention in their respective geographic regions.

B. Regional offices may provide technical support and assistance, training coordination, outreach, advocacy, prevention and public education and leadership to communities and providers in their respective geographic regions. They may also provide specific support to the bureau for functions such as licensing examination, planning, evaluation and Emergency Medical Services Fund Act administration."

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 527, AS AMENDED

CHAPTER 244

CHAPTER 244, LAWS 2003

AN ACT

RELATING TO ELECTIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE MUNICIPAL ELECTION CODE TO PROVIDE FOR ABSENTEE VOTING RATHER THAN EARLY VOTING FOR ANY REGULAR OR SPECIAL MUNICIPAL ELECTION.

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

Section 1. Section 3-8-2 NMSA 1978 (being Laws 1985, Chapter 208, Section 10, as amended) 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 questions to be voted on and for the marking, casting or otherwise recording of such votes. "Ballot" includes marksense ballots, absentee ballots, ballot faces, emergency paper ballots and paper ballots used in lieu of voting machines;

(3) "ballot face" means the 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 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) "marksense ballot" means a paper ballot card used on an optical-scan vote-tabulating machine;

(9) "municipal clerk's office" means the office of the municipal clerk or any other room used in the process of absentee voting, counting and tallying of absentee ballots or canvassing the election results within the confines of the building where the municipal clerk's office is located;

(10) "paper ballot" means a ballot manually marked by the voter and counted by hand without the assistance of a machine or optical-scan vote tabulating device;

(11) "precinct" means a portion of a county situated entirely in or partly in a municipality that has been designated by the county as a precinct for election purposes and that is entitled to a polling place and a precinct board. If a precinct includes territory both inside and outside the boundaries of a municipality, "precinct", for municipal elections, shall mean only that portion of the precinct lying within the boundaries of the municipality;

(12) "consolidated precinct" means the combination of two or more precincts pursuant to the Municipal Election Code;

(13) "precinct board" means the appointed election officials serving a single or consolidated precinct;

(14) "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

(15) "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 2. 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. 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. If electronic voting machines are to be used for absentee voting, inspection and certification shall occur not later than seven days prior to the beginning of absentee voting 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) ensure that the correct ballot face has been installed on each voting machine, if ballot faces are to be installed;

(2) test each counter for accuracy by casting votes upon it until it correctly registers each vote cast;

(3) test each voting machine to assure that it has been correctly programmed; and

(4) 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:

(1) the county clerk shall reset each counter at zero;

(2) 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;

(3) 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 voting machine has been tested by voting on each registered counter to prove the counter is in perfect condition;

(d) state that the correct ballot face has been installed on the voting machine, if ballot faces are to be installed;

(e) show the number of the metal seal that has sealed the machine; and

(f) show the number registered on the protective counter;

(4) 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

(5) 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 the 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, provided that any voting machines to be used for absentee voting shall be delivered to the municipal clerk no earlier than five days prior to the beginning of absentee voting and no later than noon on the day prior to the beginning of absentee voting in person in the office of the municipal clerk.

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 3. Section 3-8-17 NMSA 1978 (being Laws 1985, Chapter 208, Section 25, as amended) is amended to read:

"3-8-17. SAMPLE BALLOTS.--

A. At the same time official ballots are printed for voting with machines or paper ballots, the municipal clerk shall cause sample ballots to be printed, which shall:

(1) be printed in both English and Spanish;

(2) be printed in a total number equal to at least five percent of the number of qualified electors in each precinct or consolidated precinct;

(3) be the same in all respects as the official ballots, except that they shall be printed on colored paper and shall not contain the facsimile signature of the municipal clerk or any endorsement on the sample ballot or the back thereof;

(4) be marked in large black capital letters, "SAMPLE BALLOT";
and

(5) be made available in reasonable quantities to all interested persons for distribution to the voters.

B. Nothing in this section shall prevent any person from having printed at his expense sample ballots, of a different color than the official sample ballot, which comply with the provisions of this subsection, so long as no marks, notations, words or other material are added to, taken from or deface, change or hide the information on or the appearance of the sample ballot as authorized by the municipal clerk."

Section 4. Section 3-8-18 NMSA 1978 (being Laws 1985, Chapter 208, Section 26, as amended) is amended to read:

"3-8-18. ELECTION SUPPLIES.--

A. If paper ballots are to be used in lieu of voting machines, then the municipal clerk shall order to be printed paper ballots and sample paper ballots no later than 5:00 p.m. on the fifty-third day preceding the day of the election. The ballots shall be delivered to the clerk not later than the eighth day preceding the day of the election.

B. No later than 5:00 p.m. on the fifty-third day preceding the day of the election, the municipal clerk shall:

(1) order absentee ballots;

(2) order ballot faces, sample voting machine ballots and emergency paper ballots, if voting machines are to be used; and

(3) order all other election supplies necessary for the conduct of the election.

C. Absentee ballots, emergency paper ballots, ballot faces for the machines and sample voting machine ballots shall be delivered to the municipal clerk not less than thirty-five days prior to the day of the election."

Section 5. 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 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 election 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, the date and time for absentee voting 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 6. 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 that encompasses his place of residence as shown on the signature roster.

B. Notwithstanding the provisions of Subsection A 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 and the district, if applicable, in which he offers to vote;

(2) his name is not listed as having been issued an absentee ballot;

(3) he presents a certificate bearing the seal and signature of the county clerk stating that his affidavit of registration is on file at the county clerk's office, that he has not been purged from the voter rolls and that he shall be permitted to vote in the precinct and election specified therein; provided that such authorization shall not be given orally by the county clerk; and

(4) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector resident of the municipality, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in the election.

C. Upon compliance with the requirements of Subsection B 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.

D. After canvass, the municipal clerk shall in writing notify the county clerk of the names of all individuals voting on certificates.

E. A person who knowingly executes a false statement required by Paragraph (4) of Subsection B of this section is guilty of perjury as provided in the Criminal Code, and voting on the basis of such falsely executed statement constitutes fraudulent voting.

F. 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 7. 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 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 C 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:

(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 the 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:

(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 C 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" that 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 8. Section 3-8-65 NMSA 1978 (being Laws 1985, Chapter 208, Section 73, as amended) is amended to read:

"3-8-65. CONTEST OF ELECTIONS--PRESERVATION OF BALLOTS--BALLOTS DEFINED--APPLICATION FOR ORDER--DEPOSIT.--

A. Either the contestant or contestee, within the time provided by the Municipal Election Code for the preservation of ballots, shall give notice by certified mail to the municipal clerk that a contest is pending in a designated court, and it is the duty of the municipal clerk to preserve the ballots of all precincts named in the notice of contest and to notify the county clerk to impound the ballot faces and voting machines used in all of the precincts named in the notice of contest until the contest has been finally determined.

B. "Ballots", as used in Subsection A of this section, includes signature rosters, registered voter lists, machine-printed returns, voting machine permits, paper ballots, marksense ballots, absentee ballots, absentee ballot outer envelopes, statements of canvass, absentee ballot applications, absentee ballot registers and absentee voter lists.

C. Any contestant or contestee may petition the district court for an order impounding ballots in one or more precincts or consolidated precincts. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along with a cash deposit of twenty-five dollars (\$25.00) per precinct or consolidated precinct, the court may issue an order of impoundment."

Section 9. Section 3-8-69 NMSA 1978 (being Laws 1985, Chapter 208, Section 77, as amended) is amended to read:

"3-8-69. RECOUNT--RECHECK--PROCEEDINGS.--

A. Immediately after filing of the application for recount or recheck, the municipal clerk shall issue a summons directed to the precinct board of each precinct or consolidated precinct specified in the application commanding it to appear at the office of the municipal clerk on a day fixed in the summons, which date shall not be more than

ten days after the filing of the application for recount or recheck. A copy of the summons shall be forwarded to the county clerk of the concerned county.

B. The municipal clerk shall deliver the summons to a sheriff or state police officer who shall forthwith personally serve it upon each of the precinct board members. The municipal clerk shall send notices by registered mail of the date, time and place fixed for recount or recheck to the district judge and county clerk.

C. The precinct board, district judge or the district court judge's designee, county clerk and the municipal clerk shall meet on the date, time and places fixed for the recount or recheck, and the ballot boxes or voting machines of the precinct or consolidated precinct involved in the recount or recheck shall be opened. The precinct boards shall recount and retally the paper ballots used in lieu of voting machines or emergency paper ballots or recheck the votes cast on the voting machine, as the case may be, and recount and retally the absentee ballots for the office in question in the presence of the municipal clerk, the county clerk, district judge or person designated to act for the judge and any other person who may desire to be present.

D. During the recount or recheck, the precinct board of a precinct or consolidated precinct where emergency paper ballots, paper ballots used in lieu of voting machines or absentee ballots were used shall recount and retally only the ballots that the election judge accepted and placed in the ballot box at the time they were cast or received, as the case may be.

E. After completion of the recount or recheck, the precinct board shall replace the emergency paper ballots, paper ballots used in lieu of voting machines or absentee ballots in the ballot box and lock it, or the voting machines shall be locked and resealed, and the precinct board shall certify to the municipal clerk the results of the recount or recheck. The district judge or the person designated to act for the judge, the county clerk and the municipal clerk shall also certify that the recount or recheck was made in their presence."

Section 10. 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, application for absentee ballots, absentee voter lists and affidavits of destruction;

(2) signature roster and registered voter list;

(3) the machine-printed returns;

- (4) oaths of office of the precinct board;
- (5) declarations of candidacy and withdrawals;
- (6) copies of all election material required to be published or posted;
- (7) a copy of all sample ballots and ballot faces;
- (8) voting machine permits;
- (9) certificates submitted by voters;
- (10) copies of all affidavits and certificates prepared in connection with the election;
- (11) all results of recounts, rechecks, contests and recanvass; and
- (12) 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 11. Section 3-8-74 NMSA 1978 (being Laws 1985, Chapter 208, Section 82, as amended) is amended to read:

"3-8-74. UNLAWFUL POSSESSION OF KEYS--ABSENTEE BALLOT--PENALTY.--

A. Unlawful possession of keys consists of the possession at any time by any person of any key to a voting machine or ballot box or possession of an imitation or duplicate thereof or making or causing to be made any imitation or duplicate thereof unless authorized by the Municipal Election Code.

B. A person who commits unlawful possession of keys is guilty of a fourth degree felony.

C. Unlawful possession of an absentee ballot consists of the possession by any person at any time of absentee ballot materials when not authorized by the Municipal Election Code to be in the possession of such materials or when such materials were obtained in an unlawful manner. As used in this section, "absentee ballot

materials" means an absentee ballot, absentee ballot envelopes, the absentee ballot register or absentee ballot return.

D. A person who commits unlawful possession of an absentee ballot is guilty of a fourth degree felony."

Section 12. Section 3-8-75 NMSA 1978 (being Laws 1985, Chapter 208, Section 83, as amended) is amended to read:

"3-8-75. FALSE VOTING--FALSIFYING ELECTION DOCUMENTS--FALSE SWEARING--PENALTY.--

A. False voting consists of:

- (1) voting or offering to vote with the knowledge of not being a qualified elector;
- (2) voting or offering to vote in the name of any other person;
- (3) knowingly voting or offering to vote in any precinct except that in which one is registered;
- (4) voting or offering to vote more than once in the same election;
- (5) inducing, abetting or procuring or attempting to induce, abet or procure a person known not to be a qualified elector to vote; or
- (6) inducing, abetting or procuring or attempting to induce, abet or procure a person who has voted once in any election to vote or attempt to vote again at the same election.

B. A person who commits false voting is guilty of a fourth degree felony.

C. Falsifying election documents consists of performing any of the following acts willfully and with knowledge and intent to deceive or mislead any voter, precinct board, municipal clerk or other election official:

- (1) printing, causing to be printed, distributing or displaying false or misleading instructions pertaining to voting or the conduct of the election;
- (2) printing, causing to be printed, distributing or displaying any official ballot, absentee ballot, marksense ballot, sample ballot, facsimile diagram, ballot face or pretended ballot that includes the name of any person not entitled by law to be on the ballot or omits or defaces the name of any person entitled by law to be on the ballot or otherwise contains false or misleading information or headings;

(3) defacing, altering, forging, making false entries in or changing any election document, including election returns, a certificate of election registration record or signature rosters, affidavits, certificates or any other election document except as authorized in the Municipal Election Code;

(4) withholding any certificate of election, registered voter list, signature roster, election return or any other election document required by or prepared and issued pursuant to the Municipal Election Code; or

(5) preparing or submitting any false certificate of election, signature roster, registered voter list, election return or any other election document.

D. A person who falsifies election documents is guilty of a fourth degree felony.

E. False swearing consists of knowingly taking or giving any oath required by the Municipal Election Code with the knowledge that the thing or matter sworn to is not a true and correct statement.

F. A person who falsely swears is guilty of a fourth degree felony."

Section 13. Section 3-9-1 NMSA 1978 (being Laws 1973, Chapter 375, Section 2, as amended) is amended to read:

"3-9-1. DEFINITIONS.--As used in Chapter 3, Article 9 NMSA 1978:

A. "absentee voting" means the casting of a vote by a qualified elector for any candidate or question prior to election day, by mail on an absentee ballot, in person on an absentee ballot or in person on a voting machine;

B. "federal qualified elector" means a qualified elector covered under the provisions of the Federal Voting Assistance Act of 1955;

C. "federal voter" means a voter covered under the provisions of the Federal Voting Assistance Act of 1955;

D. "covered under the provisions of the Federal Voting Assistance Act of 1955" means:

(1) members of the armed forces while in the active service and their spouses and dependents;

(2) members of the merchant marine of the United States and their spouses and dependents; and

(3) citizens of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them;

E. "armed forces" means the army, navy, air force, marine corps, coast guard, environmental science services administration and public health service;

F. "members of the merchant marine" means persons other than members of the armed forces:

(1) employed as officers or members of crews of vessels documented under the laws of the United States or of vessels owned by the United States or of vessels of foreign registry under charter to or control of the United States; or

(2) enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as officers or members of crews of any such vessels, but does not include great lakes or inland waterways service;

G. "voter" means a qualified elector of the municipality; and

H. "election" means a regular or special municipal election."

Section 14. Section 3-9-4 NMSA 1978 (being Laws 1973, Chapter 375, Section 3, as amended) is amended to read:

"3-9-4. ABSENTEE BALLOT APPLICATION--REJECTION--ACCEPTANCE--ISSUANCE OF ABSENTEE BALLOT.--

A. Application by a federal qualified elector or federal voter shall be made on the federal postcard application form to the municipal clerk.

B. The municipal clerk shall prescribe the form of the absentee ballot application.

C. An application for an absentee ballot may be obtained by the voter from the municipal clerk. An application for an absentee ballot may be requested by the voter in person, by telephone or by mail, and any voter may request an application for an absentee ballot for an immediate family member. For purposes of this section, "immediate family" means spouse, children, parents, brothers and sisters.

D. A list containing the names and addresses of voters requesting absentee ballot applications shall be kept and shall be made a part of the absentee ballot register.

E. Upon receipt of a properly completed and delivered application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

F. The municipal clerk shall reject an absentee ballot application for any of the following reasons:

(1) the application is not made on the form provided by the municipal clerk;

(2) the application does not set forth the applicant's full name and address;

(3) the application does not set forth the applicant's social security number or date of birth;

(4) the application is not signed by the applicant; or

(5) the applicant:

(a) has no valid affidavit of registration on file with the county clerk and is not a federal qualified elector or federal voter;

(b) has a valid affidavit of registration on file with the county clerk, but is not a resident of the municipality; or

(c) is a federal qualified elector or federal voter, but is not entitled to vote in the municipal election; and

(d) cannot comply with Subparagraph (a), (b) or (c) of this paragraph pursuant to Subsection B of Section 3-8-40 NMSA 1978.

G. If the municipal clerk rejects the absentee ballot application pursuant to Subsection F of this section, then the municipal clerk shall refuse to issue an absentee ballot and shall mark the application "rejected" and enter "rejected" in the absentee ballot register and file the application in a separate file. The municipal clerk shall, within twenty-four hours of rejection of the application, notify the applicant of the reasons for rejection of the application. Upon rejection of the application, the municipal clerk shall determine the method of notification to the voter. Notification shall only be made by courier with return receipt or certified mail, return receipt requested. The person whose application has been rejected shall have ten days from receipt of notice to appeal or show cause why the application should be accepted. In addition, if the application is incomplete, the clerk shall mail immediately a new application for absentee ballot.

H. If the application for absentee ballot is accepted, the municipal clerk shall:

(1) mark the application "accepted";

and

(2) enter the required information in the absentee ballot register;

(3) issue to the applicant an absentee ballot.

I. The municipal clerk shall deliver the absentee ballot to the applicant in the office of the municipal clerk if the application for absentee ballot has been accepted and if the application is submitted in person by the applicant or mail an absentee ballot to any qualified elector, federal qualified elector or federal voter whose application for an absentee ballot was received by mail and has been accepted. The municipal clerk shall notify the county clerk who shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. Names of individuals that have been labeled "absentee ballot" shall appear on a separate list called the "absentee voter list". This list shall be submitted to the municipal clerk by the county clerk in the same manner as provided in Subsection B of Section 3-8-7 NMSA 1978.

J. It is the duty of the municipal clerk to verify the signature roster and absentee voter list to ensure that all names of individuals who have been issued absentee ballots have been labeled "absentee ballot" on the signature roster and their names listed on the absentee voter list. If not, the municipal clerk shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. The municipal clerk shall then enter the name and all required information on the absentee voter list.

K. If the application for an absentee ballot is delivered in person to the municipal clerk during regular hours and days of business and is accepted, the municipal clerk shall issue the voter the absentee ballot and it shall be marked by the applicant in a voting booth in the municipal clerk's office, sealed in the proper envelopes and otherwise properly executed and returned to the municipal clerk or the clerk's authorized representative before the applicant leaves the office of the municipal clerk, or allow the voter to cast a vote on the voting machine. Absentee ballots may be marked in person beginning at 8:00 a.m. on the twenty-seventh day before the election at the municipal clerk's office during the regular hours and days of business until 5:00 p.m. on the Friday immediately prior to the date of election. An absent voter may vote in person on a paper ballot, or on an electronic voting machine, at the municipal clerk's office beginning at 8:00 a.m. on the twentieth day prior to the election until 5:00 p.m. on the Friday immediately before the election.

L. The act of marking the absentee ballot in the office of the municipal clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the municipal clerk a polling place subject to the requirements of a polling place in the Municipal Election Code other than is provided in this subsection. During the period of time between the date a person may first apply in person for an

absentee ballot and the final date for such application and marking of the ballot in the office of the municipal clerk, it is unlawful to solicit votes or display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office.

M. Absentee ballots shall be air mailed to federal qualified electors and federal voters whose applications have been accepted not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on the Friday immediately prior to the date of the election.

N. Absentee ballots shall be mailed to voters whose applications have been approved not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on the Friday immediately prior to the date of the election.

O. No absentee ballot shall be delivered or mailed to any person other than the applicant for such ballot."

Section 15. Section 3-9-7 NMSA 1978 (being Laws 1973, Chapter 375, Section 8, as amended) is amended to read:

"3-9-7. MANNER OF VOTING--USE OF AN ELECTRONIC VOTING DEVICE.--

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 their ballots in person 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. The municipal clerk shall not accept an official outer envelope that is delivered in person to the municipal clerk's office from any person other than the voter signing the official outer envelope.

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.

D. When an electronic voting device is used by the voter to cast an absentee vote, the municipal clerk shall ensure that each absentee voting machine is located within the office of the municipal clerk. The area shall be secured by lock and key. Each day during the time the absentee voting machine is used for absentee voting, the municipal clerk shall, in the presence of one other employee of the municipality, unlock the office where the voting machine is located. Each day, at the close of regular office hours, the municipal clerk shall, in the presence of one other municipal employee, secure the office where the voting machine is located. Each day immediately after unlocking or locking the office where the voting machine is located, the municipal clerk and the employee present shall sign or initial the absentee voting daily report. The municipal clerk shall prescribe the form of the absentee voting daily report, which shall include the following information:

- (1) the voting machine serial number;
- (2) beginning and ending public counter number for the day;
- (3) beginning and ending protective counter number for the day;
- (4) closing seal number, if any;
- (5) the total number of voters for the day; and
- (6) a place for the date and signature of the municipal clerk and the municipal employee.

E. Voting shall be conducted substantially in the manner provided in the Municipal Election Code. The absentee voting daily report shall be submitted to the absent voter precinct on election day, along with any voting machines used."

Section 16. Section 3-9-8 NMSA 1978 (being Laws 1973, Chapter 375, Section 9, as amended) is amended to read:

"3-9-8. CARE OF ABSENTEE BALLOTS--DESTRUCTION OF UNUSED BALLOTS BY MUNICIPAL CLERK.--

A. The municipal clerk shall mark on each completed official outer envelope the date and time of receipt in his office, record this information in the absentee ballot register and safely and securely keep the official outer envelope unopened until it is delivered on election day to the proper precinct board or until it is canceled and destroyed in accordance with law. Once a ballot is officially accepted by the municipal clerk and recorded in the absentee ballot register, it cannot be returned to the voter for any reason.

B. The municipal clerk shall accept completed official outer envelopes received by mail or delivered in person to the municipal clerk's office by the voter

signing the official outer envelope or by members of the voter's immediate family until 7:00 p.m. on election day. For purposes of this section, "immediate family" means spouse, children, parents, brothers and sisters. Any completed outer envelope received after that time and date shall be marked as to the time and date received, shall not be delivered to the precinct board and shall be preserved until the time for election contests has expired. In the absence of a court order, after the expiration of the time for election contests, the municipal clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the municipal clerk shall count the numbers of late ballots from voters, federal voters and federal qualified electors and record the number from each category in the absentee ballot register.

C. After 5:00 p.m. and not later than 8:00 p.m. on the Thursday immediately preceding the date of the election, the municipal clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the municipal clerk's office all such unused ballots. The municipal clerk shall execute a certificate of such destruction, which shall include the numbers on the ballots destroyed, and such certificate shall be placed within the absentee ballot register.

D. At 7:00 p.m. on the day of the election, the municipal clerk shall determine the number of ballots that were mailed and have not been received and execute a "certificate of unreceived absentee ballots". Such certificate shall be placed in the absentee ballot register and shall become an official part of the register. The municipal clerk shall determine the form of the certificate of unreceived absentee ballots."

Section 17. Section 3-9-10 NMSA 1978 (being Laws 1985, Chapter 208, Section 98, as amended) is amended to read:

"3-9-10. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER PRECINCT.--After 7:00 a.m. on election day, the municipal clerk shall deliver to the absent voter precinct board the absentee ballot register and the absent voter ballots received by the clerk, any electronic voting machines used and all absentee voting daily reports. Prior to 7:00 p.m. on election day, the municipal clerk shall deliver any ballots received on election day to the absent voter precinct board and the precinct board shall note the receipt of ballots in the absentee ballot register and on the absentee voter list. On delivery of the ballots, the municipal clerk or his designee shall remain in the presence of the absent voter precinct board until the clerk has observed the opening of all official mailing envelopes, the deposit of all ballots in the locked ballot box and the listing of the names on all of the official mailing envelopes in the absentee voter list. All functions of the absent voter precinct board shall be conducted in the place designated as the absent voter precinct."

Section 18. Section 3-9-13 NMSA 1978 (being Laws 1973, Chapter 375, Section 11, as amended) is amended to read:

"3-9-13. VOTING IN PERSON PROHIBITED.--

A. No person who has been issued an absentee ballot shall vote in person at that person's regular precinct polling place on election day except as otherwise provided in the Municipal Election Code.

B. At any time prior to 5:00 p.m. on the Friday immediately preceding the date of the election, any person whose absentee ballot application has been accepted and who was mailed an absentee ballot but who has not received the absentee ballot may execute, in the office of the municipal clerk of the municipality where that person is registered to vote, a sworn affidavit stating that the person did not receive or vote his absentee ballot. Upon receipt of the sworn affidavit, the municipal clerk shall issue the voter a replacement absentee ballot.

C. The municipal clerk shall prescribe the form of the affidavit and the manner in which the municipal clerk shall void the first ballot mailed to the applicant."

Section 19. 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. A voter who has submitted an application for an absentee ballot that was accepted by the municipal clerk but who has not received the absentee ballot by mail as of the date of the election may present himself at his assigned polling place and, after executing an affidavit of non-receipt of absentee ballot, shall be issued an emergency paper ballot in lieu of an absentee ballot by the presiding judge, and shall be allowed to mark the ballot.

B. The voter shall place the completed emergency paper ballot issued in lieu of an absentee ballot in an official inner envelope, substantially in the form prescribed pursuant to Section 3-9-6 NMSA 1978, which shall be sealed by the voter. The official inner envelope shall then be placed by the voter, in the presence of the presiding judge, in an official outer envelope substantially as prescribed for a transmittal envelope or mailing envelope pursuant to Section 3-9-6 NMSA 1978. The presiding judge shall fill in the information on the back of the envelope that identifies the voter by name and signature roster number and contains the printed affidavit that the voter made application for an absentee ballot, which the voter believes to have been accepted by the municipal clerk, that the voter swears an absentee ballot had not been received as of the date of the election and that the voter was issued an emergency paper ballot in lieu of an absentee ballot, and that the ballot was marked by the voter and submitted to the presiding judge.

C. The presiding judge shall place all emergency paper ballots issued in lieu of absentee ballots in a special envelope provided for that purpose by the municipal

clerk, seal the envelope and return it to the municipal clerk along with the machine tally sheets after the closing of the polls. The sealed envelope shall not be placed in the locked ballot box.

D. The municipal clerk shall, upon receipt of the envelope containing emergency paper ballots in lieu of absentee ballots, and no later than forty-eight hours after the close of the polls for the election, remove the transmittal envelopes and without removing or opening the inner envelopes, determine:

(1) if the voter did in fact make application for an absentee ballot that was accepted by the municipal clerk;

(2) if an absentee ballot was mailed by the municipal clerk to the voter; and

(3) whether an absentee ballot was received by the municipal clerk from the voter by 7:00 p.m. on election day.

E. If the municipal clerk determines that the emergency paper ballot in lieu of absentee ballot is valid, that an absentee ballot was mailed to the voter and that no absentee ballot was received from the voter by the municipal clerk, the municipal clerk shall remove the inner envelope without opening it, retain the transmittal envelope with the other election returns and place the inner envelope, unopened, in a secure and locked container to be transmitted to the canvassing board to be tallied and included in the canvass of the election returns for the municipality.

F. If the municipal clerk determines that the emergency paper ballot in lieu of absentee ballot is not valid because the application for absentee ballot was rejected and no ballot was mailed to the voter, or that a ballot was received from the voter by the municipal clerk not later than 7:00 p.m. on election day, the municipal clerk shall write "rejected invalid ballot" on the front of the transmittal envelope and the transmittal envelope shall not be sent to the canvassing board for counting and tallying. The municipal clerk shall retain the unopened transmittal envelope in a safe and secure manner and shall notify the district attorney in writing of the alleged violation of the Municipal Election Code. A copy of the notification to the district attorney shall be sent by first class mail to the voter and to the secretary of state.

G. The municipal clerk shall furnish and shall prescribe the form of the necessary envelopes to be used in accordance with the purposes of this section, and shall take steps to preserve the secrecy of any ballots cast pursuant to this section."

Section 20. REPEAL.--Sections 3-8-81 through 3-8-83,

3-8-83.1 and 3-8-84 through 3-8-95 NMSA 1978 (being Laws

1999, Chapter 278, Sections 37 through 39, Laws 2001,

Chapter 197, Section 11 and Laws 1999, Chapter 278,
Sections 40 through 44 and 46 through 52, as amended) are
repealed.

SENATE BILL 540, AS AMENDED

CHAPTER 245

CHAPTER 245, LAWS 2003

AN ACT

RELATING TO REAL ESTATE; PROVIDING FOR AN ALTERNATIVE METHOD TO
RECORD A FULL SATISFACTION OF DEBT UNDER CERTAIN CIRCUMSTANCES.

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

Section 1. ALTERNATIVE FORM OF RELEASE OF MORTGAGE-- FILING BY TITLE INSURER.--

A. If, within ninety days after full satisfaction of a debt or evidence of debt secured by a mortgage or deed of trust upon any real estate, evidence of the full satisfaction has not been recorded pursuant to the provisions of Section 48-7-4 NMSA 1978, a title insurer may prepare and record a release of the mortgage or deed of trust; provided, however, no release shall be recorded by the title insurer unless the insurer has, no later than ten days prior to the date of recording, mailed notice of the intent to record to the last known address of the mortgagee, the trustee and beneficiary of a deed of trust or the assignee of record of the debt or evidence of debt.

B. A release recorded pursuant to this section shall include:

- (1) the name of the mortgagee or trustee and beneficiary;
- (2) the name of the mortgagor or trustor;
- (3) the recording reference to the mortgage or deed of trust;
- (4) a recital that the obligation secured by the mortgage or deed of trust has been paid in full; and
- (5) the date and amount of payment.

C. A release recorded pursuant to this section shall be deemed to be the equivalent of a release recorded pursuant to Section 48-7-4 NMSA 1978.

D. In addition to any other remedy, a title insurer recording a release pursuant to this section shall be liable to any mortgagee or beneficiary of a deed of trust for damages, including attorney fees, that the mortgagee or beneficiary of a deed of trust may sustain by reason of the wrongful recording of a release of mortgage or deed of trust.

E. Nothing in this section relieves a person from an obligation to record a full satisfaction or release pursuant to Section 48-7-4 NMSA 1978 or from the imposition of a penalty for failure to record a full satisfaction or release pursuant to Section 48-7-5 NMSA 1978.

F. A title insurer may charge a reasonable fee to the mortgagee for the preparation and recording of the release of mortgage.

SENATE BILL 570, AS AMENDED

CHAPTER 246

CHAPTER 246, LAWS 2003

AN ACT

RELATING TO LIQUOR LICENSING; INCREASING THE FEES FOR CERTAIN LICENSES; INCREASING THE APPLICATION FEE FOR A LIQUOR LICENSE.

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

Section 1. Section 60-6A-15 NMSA 1978 (being Laws 1981, Chapter 39, Section 32, as amended) is amended to read:

"60-6A-15. LICENSE FEES.--Every application for the issuance or renewal of the following licenses shall be accompanied by a license fee in the following specified amounts:

A. manufacturer's license as a distiller, except a brandy manufacturer, three thousand dollars (\$3,000);

B. manufacturer's license as a brewer, three thousand dollars (\$3,000);

C. manufacturer's license as a rectifier, one thousand fifty dollars (\$1,050);

D. wholesaler's license to sell all alcoholic beverages for resale only, two thousand five hundred dollars (\$2,500);

E. wholesaler's license to sell spirituous liquors and wine for resale only, one thousand seven hundred fifty dollars (\$1,750);

F. wholesaler's license to sell spirituous liquors for resale only, one thousand five hundred dollars (\$1,500);

G. wholesaler's license to sell beer and wine for resale only, one thousand five hundred dollars (\$1,500);

H. wholesaler's license to sell beer for resale only, one thousand dollars (\$1,000);

I. wholesaler's license to sell wine for resale only, seven hundred fifty dollars (\$750);

J. retailer's license, one thousand three hundred dollars (\$1,300);

K. dispenser's license, one thousand three hundred dollars (\$1,300);

L. canopy license, one thousand three hundred dollars (\$1,300);

M. restaurant license, one thousand fifty dollars (\$1,050);

N. club license, for clubs with more than two hundred fifty members, one thousand two hundred fifty dollars (\$1,250), and for clubs with two hundred fifty members or fewer, two hundred fifty dollars (\$250);

O. wine bottler's license to sell to wholesalers only, five hundred dollars (\$500);

P. public service license, one thousand two hundred fifty dollars (\$1,250);

Q. nonresident licenses, for a total billing to New Mexico wholesalers:

(1) in excess of:

\$3,000,000 annually \$10,500;

1,000,000 annually 5,250;

500,000 annually 3,750;

200,000 annually 2,700;

100,000 annually 1,800;

and

50,000 annually 900;

and

(2) of \$50,000 or less \$300;

R. wine wholesaler's license, for persons with sales of five thousand gallons of wine per year or less, twenty-five dollars (\$25.00), and for persons with sales in excess of five thousand gallons of wine per year, one hundred dollars (\$100); and

S. beer bottler's license, two hundred dollars (\$200)."

Section 2. Section 60-6B-2 NMSA 1978 (being Laws 1981, Chapter 39, Section 38, as amended) is amended to read:

"60-6B-2. APPLICATIONS.--

A. Before a new license authorized by the Liquor Control Act may be issued by the director, the applicant for the license shall:

(1) submit to the director a written application for the license under oath, in the form prescribed by and stating the information required by the director, together with a nonrefundable application fee of two hundred dollars (\$200);

(2) submit to the director for his approval a description, including floor plans, in a form prescribed by the director, that shows the proposed licensed premises for which the license application is submitted. The area represented by the approved description shall become the licensed premises;

(3) if the applicant is a corporation, be required to submit as part of its application the following:

(a) a certified copy of its articles of incorporation or, if a foreign corporation, a certified copy of its certificate of authority;

(b) the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation and the amounts of stock held by each stockholder; provided, however, a corporation may not be licensed if an officer, manager, director or holder of more than ten percent of the stock would not be eligible to hold a license pursuant to the Liquor Control Act,

except that the provision of Subsection D of Section 60-6B-1 NMSA 1978 shall not apply if the stock is listed with a national securities exchange;

(c) the name of the resident agent of the corporation authorized to accept service of process for all purposes, including orders and notices of the director, which agent shall be approved by the director with respect to his character;

(d) a duly executed power of attorney authorizing the agent described in Subparagraph (c) of this paragraph to exercise full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to the sale of alcoholic beverages under authority of the license requested; and

(e) such additional information regarding the corporation as the director may require to assure full disclosure of the corporation's structure and financial responsibility;

(4) if the applicant is a limited partnership, submit as part of its application the following:

(a) a certified copy of its certificate of limited partnership;

(b) the names and addresses of all general partners and of all limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other income paid by the limited partnership. A limited partnership shall not receive a license if any partner designated in this subsection would not be eligible to hold a license issued pursuant to the Liquor Control Act; and

(c) such additional information regarding the limited partnership as the director may require to assure full disclosure of the limited partnership's structure and financial responsibility; and

(5) obtain approval for the issuance from the governing body of the local option district in which the proposed licensed premises are to be located in accordance with the provisions of the Liquor Control Act.

B. Every applicant for a new license or for a transfer of ownership of a license, if an individual or general partnership, shall file with the application two complete sets of fingerprints of each individual, taken under the supervision of and certified to by an officer of the New Mexico state police, a county sheriff or a municipal chief of police. If the applicant is a corporation, it shall file two complete sets of fingerprints for each stockholder holding ten percent or more of the outstanding stock, principal officer, director and the agent responsible for the operation of the licensed business. The fingerprints shall be taken and certified to as provided for an individual or partnership. If the applicant is a limited partnership, it shall file two complete sets of

fingerprints for each general partner and for each limited partner contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other compensation by way of income paid by the limited partnership. The fingerprints shall be taken and certified to as provided for an individual or partnership.

C. Upon submission of a sworn affidavit from each person who is required to file fingerprints stating that the person has not been convicted of a felony in any jurisdiction and pending the results of background investigations, a temporary license for ninety days may be issued. The temporary license may be extended by the director for an additional ninety days if the director determines there is not sufficient time to complete the background investigation or obtain reviews of fingerprints from appropriate agencies. A temporary license shall be surrendered immediately upon order of the director.

D. An applicant who files a false affidavit shall be denied a license. When the director determines a false affidavit has been filed, he shall refer the matter to the attorney general or district attorney for prosecution of perjury.

E. If an applicant is not a resident of New Mexico, fingerprints may be taken under supervision and certification of comparable officers in the state of residence of the applicant.

F. Before issuing a license, the department shall hold a public hearing within thirty days after receipt of the application pursuant to Subsection K of this section.

G. An application for transfer of ownership shall be filed with the department no later than thirty days after the date a person acquired an ownership interest in a license. It shall contain the actual date of sale of the license and shall be accompanied by a sworn affidavit from the owner of record of the license agreeing to the sale of the license to the applicant as well as attesting to the accuracy of the information required by this section to be filed with the department. A license shall not be transferred unless it will be placed into operation in an actual location within one hundred twenty days of issuance of the license, unless for good cause shown the director grants an additional extension for a length of time determined by the director.

H. Whenever it appears to the director that there will be more applications for new licenses than the available number of new licenses during any time period, a random selection method for the qualification, approval and issuance of new licenses shall be provided by the director. The random selection method shall allow each applicant an equal opportunity to obtain an available license, provided that all dispenser's and retailer's licenses issued in any calendar year shall be issued to residents of the state. For the purposes of random selection, the director shall also set a reasonable deadline by which applications for the available licenses shall be filed. A person shall not file more than one application for each available license and no more than three applications per calendar year.

I. After the deadline set in accordance with Subsection H of this section, no more than ten applications per available license shall be selected at random for priority of qualification and approval. Within thirty days after the random selection for the ten priority positions for each license, a hearing pursuant to Subsection K of this section shall be held to determine the qualifications of the applicant having the highest priority for each available license. If necessary, such a hearing shall be held on each selected application by priority until a qualified applicant for each available license is approved. Further random selections for priority positions shall also be held pursuant to this section as necessary.

J. All applications submitted for a license shall expire upon the director's final approval of a qualified applicant for that available license.

K. The director shall notify the applicant by certified mail of the date, time and place of the hearing. The hearing shall be held in Santa Fe. The director may designate a hearing officer to take evidence at the hearing. The director or the hearing officer shall have the power to administer oaths.

L. In determining whether a license shall be issued, the director shall take into consideration all requirements of the Liquor Control Act. In the issuance of a license, the director shall specifically consider the nature and number of prior violations of the Liquor Control Act by the applicant or of any citations issued within the prior five years against a license held by the applicant or in which the applicant had an ownership interest required to be disclosed under the Liquor Control Act. The director shall disapprove the issuance or give preliminary approval of the issuance of the license based upon a review of all documentation submitted and any investigation deemed necessary by the director.

M. Before a new license is issued for a location, the director shall cause a notice of the application therefor to be posted conspicuously, on a sign not smaller than thirty inches by forty inches, on the outside of the front wall or front entrance of the immediate premises for which the license is sought or, if no building or improvements exist on the premises, the notice shall be posted at the front entrance of the immediate premises for which the license is sought, on a billboard not smaller than five feet by five feet. The contents of the notice shall be in the form prescribed by the department, and such posting shall be over a continuous period of twenty days prior to preliminary approval of the license.

N. A license shall not be issued until the posting requirements of Subsection M of this section have been met.

O. All costs of publication and posting shall be paid by the applicant.

P. It is unlawful for a person to remove or deface a notice posted in accordance with this section. A person convicted of a violation of this subsection shall

be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment in the county jail for not more than one hundred twenty days or by both.

Q. A person aggrieved by a decision made by the director as to the approval or disapproval of the issuance of a license may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. If the disapproval is based upon local option district disapproval pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the local option district shall be a necessary party to any appeal. The decision of the director shall continue in force, pending a reversal or modification by the district court, unless otherwise ordered by the court."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 574

CHAPTER 247

CHAPTER 247, LAWS 2003

AN ACT

RELATING TO LICENSE FEES; INCREASING LICENSE FEES OF SECURITIES SALES REPRESENTATIVES AND INVESTMENT ADVISER REPRESENTATIVES.

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

Section 1. Section 58-13B-1 NMSA 1978 (being Laws 1986, Chapter 7, Section 1) is amended to read:

"58-13B-1. SHORT TITLE.--Chapter 58, Article 13B NMSA 1978 may be cited as the "New Mexico Securities Act of 1986"."

Section 2. Section 58-13B-9 NMSA 1978 (being Laws 1986, Chapter 7, Section 9) is amended to read:

"58-13B-9. FEES.--

A. An applicant for licensing shall pay a registration fee, due annually, in the following amounts:

(1) broker-dealer, three hundred dollars (\$300);

(2) sales representative, an amount not to exceed fifty dollars (\$50.00);

(3) investment adviser, three hundred dollars (\$300); and

(4) investment adviser representative, an amount not to exceed fifty dollars (\$50.00).

B. Failure to pay the annual registration fee required by Subsection A of this section by December 31 of any year shall result in automatic expiration of a license. The director may reinstate an expired license upon payment of delinquent fees.

C. The director by rule may require registration of branch offices and may impose a fee for processing such registrations as well as an annual fee. For the purpose of this section, a "branch office" means any place of business in this state, other than the principal office in this state of the broker-dealer, from which one or more sales representatives transact business.

D. If an application is denied or withdrawn or the license is revoked, suspended or withdrawn, the director shall retain the fee paid."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 596

CHAPTER 248

CHAPTER 248, LAWS 2003

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; PROVIDING THAT CERTAIN PERSONS, RETIRED PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT, SHALL NOT BE REQUIRED TO MAKE EMPLOYEE CONTRIBUTIONS UPON EMPLOYMENT PURSUANT TO THE EDUCATIONAL RETIREMENT ACT.

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

Section 1. A new section of the Educational Retirement Act is enacted to read:

"PERSONS RECEIVING RETIREMENT BENEFITS PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT.--

A. An employee who is retired pursuant to the Public Employees Retirement Act and who has not suspended retirement benefits received pursuant to that act shall not make contributions to the fund as otherwise required in the Educational Retirement Act.

B. An employee who continues to receive retirement benefits pursuant to the Public Employees Retirement Act and who does not make contributions to the fund is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of employment with a local administrative unit.

C. Nothing in this section shall affect the obligation of a local administrative unit to make contributions to the fund as required in the Educational Retirement Act."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 609

CHAPTER 249

CHAPTER 249, LAWS 2003

AN ACT

RELATING TO CRIME STOPPERS; CREATING THE CRIME STOPPERS ADVISORY COUNCIL; PROVIDING FOR CONFIDENTIALITY OF RECORDS AND IMMUNITY; IMPOSING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Crime Stoppers Act".

Section 2. ADVISORY COUNCIL--COMPOSITION--VACANCIES--PAYMENT.--

A. The "crime stoppers advisory council" is created. The council shall consist of five members from local crime stoppers programs, four of whom shall be from

the four quadrants of the state and one from Albuquerque. All members of the council shall be appointed by the governor for two-year terms.

B. A vacancy on the council shall be filled by gubernatorial appointment for the remainder of the unexpired term. A vacancy on the council shall not impair the right of the remaining members to exercise all the powers and duties of the council.

C. Members of the council shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation or allowance.

Section 3. POWERS AND DUTIES OF ADVISORY COUNCIL.--

A. The powers and duties of the crime stoppers advisory council are to:

(1) advise and assist in the creation and maintenance of local crime stoppers programs;

(2) certify local crime stoppers programs for the purposes of confidentiality of records, privileges and immunities set forth in the Crime Stoppers Act;

(3) encourage the media to promote the functions of local crime stoppers programs; and

(4) facilitate training for local crime stoppers programs.

B. The council shall not take part in the receipt of reports or tips regarding criminal activity.

Section 4. CONFIDENTIALITY OF RECORDS.--

A. Evidence of a communication between a person submitting a report to a local crime stoppers program and the person accepting the report on behalf of the program is not admissible in a court or an administrative proceeding, except as provided in Subsection B of this section.

B. Records and reports of a local crime stoppers program are confidential and shall not be produced before a court or other tribunal, except on a motion by:

(1) a criminal defendant claiming that a record or report contains specific evidence that is exculpatory to the defendant on trial for that offense; or

(2) a person in civil court who has been exonerated of a criminal charge that was filed as a result of a report to a local crime stoppers program, and denial of access to a record or report would leave the person without the ability to offer prima facie proof that a legal injury was suffered through the wrongful acts of another.

C. Upon motion made pursuant to Subsection B of this section, a court may subpoena a record or report, but shall conduct an in camera inspection of the materials produced to determine whether there is evidence as alleged to warrant disclosure pursuant to Subsection B of this section. If the court finds such evidence, the court shall determine how much of the evidence to disclose and whether the identity of the person who submitted the report to the local crime stoppers program must be disclosed.

D. The court shall protect the identity of a person who submits a report to a local crime stoppers program as it would protect the identity of a confidential police informer.

E. A local crime stoppers program shall be certified by the crime stoppers advisory council before it can claim confidentiality under this section.

Section 5. CONFIDENTIALITY--PENALTY.--

A. It is unlawful for any member, officer or employee of a local crime stoppers program to reveal to an individual, other than the proper law enforcement agencies:

(1) information gained through the program relating to criminal activity; or

(2) the contents of records and reports that are confidential.

B. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

Section 6. IMMUNITY FROM LIABILITY.--A person who in good faith communicates a report of criminal activity to a crime stoppers program or who in good faith receives, forwards or acts upon such a report is immune from civil liability for any act or omission resulting in the arrest, filing of criminal charges or trial of a person who is later exonerated or acquitted of a criminal charge.

SENATE JUDICIARY COMMITTEE

SUBSTITUTE FOR SENATE BILL 683

CHAPTER 250

CHAPTER 250, LAWS 2003

AN ACT

RELATING TO MUSEUMS; ENACTING THE NEW MEXICO FILM MUSEUM ACT; ESTABLISHING A NEW MEXICO FILM MUSEUM IN SANTA FE; CREATING A BOARD; PROVIDING POWERS AND DUTIES FOR THE BOARD.

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

Section 1. SHORT TITLE.--This act may be cited as the "New Mexico Film Museum Act".

Section 2. DEFINITIONS.--As used in the New Mexico Film Museum Act:

- A. "board" means the board of trustees of the museum; and
- B. "museum" means the New Mexico film museum.

Section 3. MUSEUM--LOCATION--PROPERTY.--

- A. The "New Mexico film museum" is created within the tourism department. The museum shall be located in Santa Fe.
- B. All real or personal property held or subsequently acquired for the operation of the museum shall be under the control and authority of the board.
- C. Funds or other property received as a gift, endowment or legacy shall remain under the control of the board and shall, upon acceptance, be used for the operation of the museum.

Section 4. BOARD--APPOINTMENT--TERMS--OFFICERS.--

- A. The board of trustees of the museum is created.
- B. The board shall consist of eleven members who are residents of New Mexico, appointed by the governor with the advice and consent of the senate. In making the appointments, the governor shall give due consideration to the geographic distribution of the members' places of residence, provided that:
 - (1) one of the members shall be the director of the museum division of the office of cultural affairs or his designee;

(2) one of the members shall be the director of the New Mexico film division of the economic development department or his designee;

(3) two members shall be film actors;

(4) two members shall be screenwriters;

(5) two members shall be film technicians; and

(6) one member representing the Indian nations, tribes, and pueblos located wholly or partially in New Mexico.

C. The board members shall be appointed for terms of four years or less so that all terms are coterminous with the current term of the governor who appointed them. The board members shall serve at the pleasure of the governor.

D. The secretary of tourism shall be an ex-officio nonvoting member of the board.

E. The president of the board shall be designated by the governor and shall serve in that capacity at the pleasure of the governor. Other officers shall be elected annually by the board at its first scheduled meeting after July 1 of each year.

Section 5. BOARD--COMPENSATION.--The members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

Section 6. BOARD--POWERS AND DUTIES.--The board shall:

A. exercise trusteeship over the collections of the museum;

B. accept and hold title to property for museum use;

C. enter into agreements or contracts with private or public organizations, agencies or individuals for the purpose of obtaining real or personal property for museum use;

D. solicit and receive funds or property of any nature for the development of the museum, its collections and its programs;

E. establish a New Mexico film museum foundation, incorporated, for the purpose of raising funds for the development of the museum, its collections and its programs; and

F. adopt rules as may be necessary to carry out the provisions of the New Mexico Film Museum Act.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE FLOOR SUBSTITUTE FOR

SENATE BILL 701, AS AMENDED

CHAPTER 251

CHAPTER 251, LAWS 2003

AN ACT

RELATING TO PUBLIC ASSISTANCE; ADDING ELECTRONIC BENEFIT TRANSFER CARDS TO UNLAWFUL DEALING IN FEDERAL FOOD COUPONS OR WIC CHECKS.

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

Section 1. Section 30-16-7 NMSA 1978 (being Laws 1971, Chapter 282, Section 1, as amended) is amended to read:

"30-16-7. UNLAWFUL DEALING IN FEDERAL FOOD COUPONS OR WIC CHECKS.--

A. Unlawful dealing in federal food coupons or WIC checks consists of a person buying, selling, trading, bartering or possessing food coupons or WIC checks issued by the United States department of agriculture with the intent to obtain an economic benefit to which he is not entitled under the rules of the human services department pertaining to the food stamp program or of the department of health pertaining to the special supplemental food program for women, infants and children.

B. Whoever commits unlawful dealing in federal food coupons or WIC checks when the value of the food coupons or WIC checks involved is one hundred dollars (\$100) or less is guilty of a petty misdemeanor.

C. Whoever commits unlawful dealing in federal food coupons or WIC checks when the value of the food coupons or WIC checks involved is over one hundred dollars (\$100) but not more than two hundred fifty dollars (\$250) is guilty of a misdemeanor.

D. Whoever commits unlawful dealing in federal food coupons or WIC checks when the value of the food coupons or WIC checks involved is over two hundred fifty dollars (\$250) but not more than two thousand five hundred dollars (\$2,500) is guilty of a fourth degree felony.

E. Whoever commits unlawful dealing in federal food coupons or WIC checks when the value of the food coupons or WIC checks involved is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony.

F. Whoever commits unlawful dealing in federal food coupons or WIC checks when the value of the food coupons or WIC checks involved exceeds twenty thousand dollars (\$20,000) is guilty of a second degree felony.

G. For the purposes of this section, "federal food coupons or WIC checks" include electronic benefit transfer cards or any other method through which food stamps or WIC benefits may be obtained."

SENATE BILL 729

CHAPTER 252

CHAPTER 252, LAWS 2003

AN ACT

RELATING TO INSURANCE; PROVIDING EMPLOYERS WITH INCREASED ACCESS TO UTILIZATION AND LOSS EXPERIENCE INFORMATION.

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

Section 1. A new section of Chapter 59A, Article 23 NMSA 1978 is enacted to read:

"EMPLOYER UTILIZATION AND LOSS DATA AVAILABILITY.--Claims information, including utilization and loss experience under health insurance provided under Chapter 59A, Article 23 NMSA 1978 shall be made available only upon the request of and to employers of employees with such coverage within sixty days of an employer's written request for such information, provided the employer's coverage extends to no less than twenty-five individual employees, regardless of whether family coverage is included. In providing such utilization data, carriers shall not reveal information that allows identification of an individual employee or the employee's family or the specific conditions for which coverage was provided."

Section 2. A new section of Chapter 59A, Article 23B NMSA 1978 is enacted to read:

"EMPLOYER UTILIZATION AND LOSS DATA AVAILABILITY.--Employer claims information, including utilization and loss experience under a health insurance policy or plan provided under Chapter 59A, Article 23B NMSA 1978 shall be made available only upon the request of and to employers of employees with such coverage within sixty days of an employer's written request for such information, provided the employer's coverage extends to no less than twenty-five individual employees, regardless of whether family coverage is included. In providing such utilization data, carriers shall not reveal information that allows identification of an individual insured or the insured's family or the specific conditions for which coverage was provided."

Section 3. A new section of Chapter 59A, Article 23C NMSA 1978 is enacted to read:

"EMPLOYER UTILIZATION AND LOSS DATA AVAILABILITY.--Employer claims information, including utilization and loss experience under health insurance under a group health plan, a health benefit plan or a plan provided under Chapter 59A, Article 23C NMSA 1978 shall be made available only upon the request of and to employers of employees with such coverage within sixty days of an employer's written request to the carrier for such information, provided the employer's coverage extends to no less than twenty-five individual employees, regardless of whether family coverage is included. In providing such utilization data, carriers shall not reveal information that permits identification of an individual insured or the insured's family or the specific conditions for which coverage was provided."

Section 4. A new section of Chapter 59A, Article 46 NMSA 1978 is enacted to read:

"EMPLOYER UTILIZATION AND LOSS DATA AVAILABILITY.--Employer claims information, including utilization and loss experience under health insurance provided under Chapter 59A, Article 46 NMSA 1978 shall be made available only upon the request of and to employers of enrollees with such coverage within sixty days of an employer's written request for such information to the carrier, provided the employer's coverage extends to no less than twenty-five individual enrollees, regardless of whether family coverage is included. In providing such utilization data, carriers shall not reveal information that permits identification of an individual enrollee or the enrollee's family or the specific conditions for which coverage was provided."

Section 5. A new section of Chapter 59A, Article 47 NMSA 1978 is enacted to read:

"EMPLOYER UTILIZATION AND LOSS DATA AVAILABILITY.--Employer claims information, including utilization and loss experience under health insurance provided

under Chapter 59A, Article 47 NMSA 1978 shall be made available only upon the request of and to employers of subscribers with such coverage within sixty days of an employer's written request to the carrier for such information, provided the employer's coverage extends to no less than twenty-five individual subscribers, regardless of whether family coverage is included. In providing such utilization data, carriers shall not reveal information that permits identification of an individual subscriber or the subscriber's family or the specific conditions for which coverage was provided."

SENATE BILL 829

CHAPTER 253

CHAPTER 253, LAWS 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CREATING A CRIMINAL OFFENSE THAT MAKES IT UNLAWFUL TO CARRY A FIREARM ON UNIVERSITY PREMISES; PROVIDING A PENALTY; ENACTING A NEW SECTION OF CHAPTER 30, ARTICLE 7 NMSA 1978.

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

Section 1. A new section of Chapter 30, Article 7 NMSA

1978 is enacted to read:

"UNLAWFUL CARRYING OF A FIREARM ON UNIVERSITY

PREMISES--NOTICE--PENALTY.--

A. Unlawful carrying of a firearm on university premises consists of carrying a firearm on university premises except by:

(1) a peace officer;

(2) university security personnel;

(3) a student, instructor or other university-authorized personnel who are engaged in army, navy, marine corps or air force reserve officer training corps programs or a state-authorized hunter safety training program;

(4) a person conducting or participating in a university-approved program, class or other activity involving the carrying of a firearm; or

(5) a person older than nineteen years of age on university premises in a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property.

B. A university shall conspicuously post notices on university premises that state that it is unlawful to carry a firearm on university premises.

C. As used in this section:

(1) "university" means a baccalaureate degree-granting post-secondary educational institution, a community college, a branch community college, a technical-vocational institute and an area vocational school; and

(2) "university premises" means:

(a) the buildings and grounds of a university, including playing fields and parking areas of a university, in or on which university or university-related activities are conducted; or

(b) any other public buildings or grounds, including playing fields and parking areas that are not university property, in or on which university-related and sanctioned activities are performed.

D. Whoever commits unlawful carrying of a firearm on university premises is guilty of a petty misdemeanor."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE FLOOR SUBSTITUTE FOR

SENATE CONSERVATION COMMITTEE SUBSTITUTE

FOR SENATE BILL 901

CHAPTER 254

CHAPTER 254, LAWS 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR AN ADDITIONAL JUDGE IN THE THIRTEENTH JUDICIAL
DISTRICT.

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

Section 1. Section 34-6-16 NMSA 1978 (being Laws 1971, Chapter 52, Section 3, as amended) is amended to read:

"34-6-16. JUDGES--THIRTEENTH JUDICIAL DISTRICT.--There shall be six district judges in the thirteenth judicial district. The judges of divisions one, three and six shall reside and maintain their principal offices in Valencia county. The judges of divisions two and five shall reside and maintain their principal offices in Sandoval county. The judge of division four shall reside and maintain his principal offices in Cibola county."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 917, AS AMENDED

CHAPTER 255

CHAPTER 255, LAWS 2003

AN ACT

RELATING TO FIREARMS; ENACTING THE CONCEALED HANDGUN CARRY ACT;
PROVIDING STATEWIDE STANDARDS FOR THE ISSUANCE OF CONCEALED
HANDGUN LICENSES; REPEALING AND ENACTING SECTIONS OF THE NMSA
1978.

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

Section 1. SHORT TITLE.--This act may be cited as the "Concealed Handgun Carry Act".

Section 2. DEFINITIONS.--As used in the Concealed Handgun Carry Act:

- handgun;
- A. "applicant" means a person seeking a license to carry a concealed handgun;
- B. "caliber" means the diameter of the bore of a handgun;
- C. "category" means whether a handgun is semiautomatic or not semiautomatic;
- D. "concealed handgun" means a loaded handgun that is not visible to the ordinary observations of a reasonable person;
- E. "department" means the department of public safety;
- F. "handgun" means a firearm that will, is designed to or may readily be converted to expel a projectile by the action of an explosion and the barrel length of which, not including a revolving, detachable or magazine breech, does not exceed twelve inches; and
- G. "licensee" means a person holding a valid concealed handgun license issued to him by the department.

Section 3. DATE OF LICENSURE--PERIOD OF LICENSURE.--
Effective January 1, 2004, the department is authorized to issue concealed handgun licenses to qualified applicants. Concealed handgun licenses shall be valid for a period of two years from the date of issuance, unless the license is suspended or revoked.

Section 4. APPLICANT QUALIFICATIONS.--

- A. The department shall issue a concealed handgun license to an applicant who:
- (1) is a citizen of the United States;
 - (2) is a resident of New Mexico or is a member of the armed forces whose permanent duty station is located in New Mexico or is a dependent of such a member;
 - (3) is twenty-five years of age or older;
 - (4) is not a fugitive from justice;
 - (5) has not been convicted of a felony in New Mexico or any other state or pursuant to the laws of the United States or any other jurisdiction;

(6) is not currently under indictment for a felony criminal offense in New Mexico or any other state or pursuant to the laws of the United States or any other jurisdiction;

(7) is not otherwise prohibited by federal law or the law of any other jurisdiction from purchasing or possessing a firearm;

(8) has not been adjudicated mentally incompetent or committed to a mental institution;

(9) is not addicted to alcohol or controlled substances; and

(10) has satisfactorily completed a firearms training course approved by the department for the category and caliber of handgun that the applicant wants to be licensed to carry as a concealed handgun.

B. The department shall deny a concealed handgun license to an applicant who has:

(1) received a conditional discharge, a diversion or a deferment or has been convicted of, pled guilty to or entered a plea of nolo contendere to a misdemeanor offense involving a crime of violence;

(2) been convicted of a misdemeanor offense involving driving while under the influence of intoxicating liquor or drugs within five years immediately preceding the application for a concealed handgun license;

(3) been convicted of a misdemeanor offense involving the possession or abuse of a controlled substance; or

(4) been convicted of a misdemeanor offense involving assault, battery or battery against a household member.

Section 5. APPLICATION FORM--SCREENING OF APPLICANTS-- FEE--LIMITATIONS ON LIABILITY.--

A. Effective July 1, 2003, applications for concealed handgun licenses shall be made readily available at locations designated by the department. Applications for concealed handgun licenses shall be completed, under penalty of perjury, on a form designed and provided by the department and shall include:

(1) the applicant's name, current address, date of birth, place of birth, social security number, height, weight, gender, hair color, eye color and driver's license number or other state-issued identification number;

(2) a statement that the applicant is aware of, understands and is in compliance with the requirements for licensure set forth in the Concealed Handgun Carry Act;

(3) a statement that the applicant has been furnished a copy of the Concealed Handgun Carry Act and is knowledgeable of its provisions; and

(4) a conspicuous warning that the application form is executed under penalty of perjury and that a materially false answer or the submission of a materially false document to the department may result in denial or revocation of a concealed handgun license and may subject the applicant to criminal prosecution for perjury as provided in Section 30-25-1 NMSA 1978.

B. The applicant shall submit to the department:

(1) a completed application form;

(2) a nonrefundable application fee in an amount not to exceed one hundred dollars (\$100);

(3) two full sets of fingerprints;

(4) a certified copy of a certificate of completion for a firearms training course approved by the department;

(5) two color photographs of the applicant;

(6) a certified copy of a birth certificate or proof of United States citizenship, if the applicant was not born in the United States; and

(7) proof of residency in New Mexico.

C. A law enforcement agency may fingerprint an applicant and may charge a reasonable fee.

D. Upon receipt of the items listed in Subsection B of this section, the department shall make a reasonable effort to determine if an applicant is qualified to receive a concealed handgun license. The department shall conduct an appropriate check of available records and shall forward the applicant's fingerprints to the federal bureau of investigation for a national criminal background check. The department shall comply with the license-issuing requirements set forth in Section 7 of the Concealed Handgun Carry Act. However, the department shall suspend or revoke a license if the department receives information that would disqualify an applicant from receiving a concealed handgun license after the thirty-day time period has elapsed.

Section 6. DEPARTMENT RESPONSE TO APPLICATION--RIGHT TO APPEAL--LICENSE RENEWAL--SUSPENSION OR REVOCATION OF LICENSE.--

A. Pursuant to rules adopted by the department, the department, within thirty days after receiving a completed application for a concealed handgun license and the results of a national criminal background check on the applicant, shall:

(1) issue a concealed handgun license to

an applicant; or

(2) deny the application on the grounds that the applicant failed to qualify for a concealed handgun license pursuant to the provisions of the Concealed Handgun Carry Act.

B. Information relating to an applicant or to a licensee received by the department or any other law enforcement agency is confidential and exempt from public disclosure unless an order to disclose information is issued by a court of competent jurisdiction. The information shall be made available by the department to a state or local law enforcement agency upon request by the agency.

C. A concealed handgun license issued by the department shall include:

(1) a color photograph of the licensee;

(2) the licensee's name, address and date

of birth;

(3) the expiration date of the concealed handgun license; and

(4) the category and caliber of handgun that the licensee is licensed to carry.

D. A licensee shall notify the department within thirty days regarding a change of his name or permanent address. A licensee shall notify the department within thirty days if the licensee's concealed handgun license is lost, stolen or destroyed.

E. If a concealed handgun license is reported lost, stolen or destroyed, the license is invalid and the licensee may obtain a duplicate license by furnishing the department a notarized statement that the original license was lost, stolen or destroyed and paying a reasonable fee.

F. A licensee may renew his concealed handgun license by submitting to the department a completed renewal form, under penalty of perjury, designed and provided

by the department, accompanied by a payment of a fifty-dollar (\$50.00) renewal fee. A licensee who renews his concealed handgun license may renew his license by taking a four-hour refresher firearms training course and paying the fifty-dollar (\$50.00) renewal fee to the department. The department shall conduct a national criminal records check of the licensee seeking to renew his license. A concealed handgun license shall not be renewed more than sixty days after it has expired. A licensee who fails to renew his concealed handgun license within sixty days after it has expired may apply for a new concealed handgun license pursuant to the provisions of the Concealed Handgun Carry Act.

G. The department shall suspend or revoke a concealed handgun license if:

(1) the licensee provided the department with false information on his application form or renewal form for a concealed handgun license;

(2) the licensee did not satisfy the criteria for issuance of a concealed handgun license at the time the license was issued to him; or

(3) subsequent to receiving a concealed handgun license, the licensee violates a provision of the Concealed Handgun Carry Act.

Section 7. DEMONSTRATION OF ABILITY AND KNOWLEDGE-- COURSE REQUIREMENT--PROPRIETARY INTEREST-- EXEMPTIONS.--

A. The department shall prepare and publish minimum standards for approved firearms training courses that teach competency with handguns. A firearms training course shall include classroom instruction and range instruction and an actual demonstration by the applicant of his ability to safely use a handgun. An applicant shall not be licensed unless he demonstrates, at a minimum, his ability to use a handgun of .32 caliber. An approved firearms training course shall be a course that is certified or sponsored by a federal or state law enforcement agency, a college, a firearms training school or a nationally recognized organization, approved by the department, that customarily offers firearms training. The firearms training course shall be not less than fifteen hours in length and shall provide instruction regarding:

(1) knowledge of and safe handling of single- and double-action revolvers and semiautomatic handguns;

(2) safe storage of handguns and child safety;

(3) safe handgun shooting fundamentals;

(4) live shooting of a handgun on a firing range;

(5) identification of ways to develop and maintain handgun shooting skills;

(6) federal, state and local criminal and civil laws pertaining to the purchase, ownership, transportation, use and possession of handguns;

(7) techniques for avoiding a criminal attack and how to control a violent confrontation; and

(8) techniques for nonviolent dispute resolution.

B. Every instructor of an approved firearms training course shall annually file a copy of the course description and proof of certification with the department.

Section 8. LIMITATION ON LICENSE.--

A. Nothing in the Concealed Handgun Carry Act shall be construed as allowing a licensee in possession of a valid concealed handgun license to carry a concealed handgun into or on premises where to do so would be in violation of state or federal law.

B. Nothing in the Concealed Handgun Carry Act shall be construed as allowing a licensee in possession of a valid concealed handgun license to carry a concealed handgun on school premises, as provided in Section 30-7-2.1 NMSA 1978.

C. Nothing in the Concealed Handgun Carry Act shall be construed as allowing a licensee in possession of a valid concealed handgun license to carry a concealed handgun on the premises of a preschool.

Section 9. POSSESSION OF LICENSE.--A licensee shall have his concealed handgun license in his possession at all times while carrying a concealed handgun.

Section 10. VALIDITY OF LICENSE ON TRIBAL LAND.--A concealed handgun license shall not be valid on tribal land, unless authorized by the governing body of an Indian nation, tribe or pueblo.

Section 11. VALIDITY OF LICENSE IN A COURTHOUSE OR COURT FACILITY.--A concealed handgun license shall not be valid in a courthouse or court facility, unless authorized by the presiding judicial officer for that courthouse or court facility.

Section 12. RULES--DEPARTMENT TO ADMINISTER.--The department shall promulgate rules necessary to implement the

provisions of the Concealed Handgun Carry Act. The rules shall include:

- A. grounds for the suspension and revocation of concealed handgun licenses issued pursuant to the provisions of the Concealed Handgun Carry Act;
- B. provision of authority for a law enforcement officer to confiscate a concealed handgun license when a licensee violates the provisions of the Concealed Handgun Carry Act;
- C. provision of authority for a private property owner to disallow the carrying of a concealed handgun on his property;
- D. creation of a sequential numbering system for all concealed handgun licenses issued by the department and display of numbers on issued concealed handgun licenses; and
- E. provision of authority for the transfer of a concealed handgun license issued by another state.

Section 13. FUND CREATED.--

- A. The "concealed handgun carry fund" is created in the state treasury.
- B. All money received by the department pursuant to the provisions of the Concealed Handgun Carry Act shall be deposited by the state treasurer for credit to the concealed handgun carry fund. The state treasurer shall invest the fund as all other state funds are invested, and income from the investment of the fund shall be credited to the fund. Balances remaining at the end of any fiscal year shall not revert to the general fund and may be used to maintain the state's criminal history database.
- C. Money in the concealed handgun carry fund is appropriated to the department to carry out the provisions of the Concealed Handgun Carry Act.

Section 14. REPEAL.--Sections 29-18-1 through 29-18-12 NMSA 1978 (being Laws 2001, Chapter 219, Sections 1 through 12) are repealed.

Section 15. SEVERABILITY.--If any part or application of the Concealed Handgun Carry Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 23, AS AMENDED

CHAPTER 256

CHAPTER 256, LAWS 2003

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING FOR THE DNA IDENTIFICATION OF MISSING PERSONS, UNIDENTIFIED PERSONS AND UNIDENTIFIED HUMAN REMAINS; AMENDING AND ENACTING SECTIONS OF THE DNA IDENTIFICATION ACT.

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

Section 1. A new section of the DNA Identification Act is enacted to read:

"EXPUNGEMENT OF SAMPLES AND DNA RECORDS.--

A. A person may request expungement of his sample and DNA records from the missing persons DNA identification system.

B. The administrative center shall expunge a person's sample and DNA records from the missing persons 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) if applicable, a certified copy of a court order that overturns the original search warrant or court order that led to the inclusion of his sample and DNA records in the missing persons DNA identification system.

C. When a person's sample and DNA records are expunged from the missing persons DNA identification system, the head of the administrative center shall ensure that the person's sample and DNA records are expunged from CODIS."

Section 2. A new section of the DNA Identification Act is enacted to read:

"REIMBURSEMENT OF COSTS.--

A. When the DNA testing of samples listed in Section 29-16-6 NMSA 1978 is required, the administrative center shall be reimbursed for the costs of the sample collection and DNA testing:

(1) of unidentified persons by the investigating law enforcement agency;

(2) of unidentified human remains by the state medical investigator or by the investigating law enforcement agency; and

(3) for relatives of, or known reference samples from, a missing person by the relatives of the missing person or by the investigating law enforcement agency.

B. Reimbursements shall be deposited in the fund."

Section 3. A new section of the DNA Identification Act is enacted to read:

"DNA SEARCHES.--

A. Searches of samples collected pursuant to the DNA Identification Act, for purposes of the missing persons DNA identification system, shall be limited to searches against DNA indexes consisting of:

(1) unidentified persons;

(2) unidentified human remains;

(3) relatives of, or known reference samples from, missing persons;
and

(4) covered offenders as defined by the DNA Identification Act and maintained by the DNA identification system.

B. Searches of samples collected from unidentified persons or relatives of missing persons pursuant to the DNA Identification Act shall not be performed against DNA indexes consisting of evidentiary samples resulting from criminal investigations."

Section 4. Section 29-16-1 NMSA 1978 (being Laws 1997, Chapter 105, Section 1) is amended to read:

"29-16-1. SHORT TITLE.--Chapter 29, Article 16 NMSA 1978 may be cited as the "DNA Identification Act"."

Section 5. Section 29-16-2 NMSA 1978 (being Laws 1997, Chapter 105, Section 2) is amended to read:

"29-16-2. PURPOSE OF ACT.--The purpose of the DNA Identification Act is to:

A. establish a DNA identification system for covered offenders;

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;

C. establish a missing persons DNA identification system consisting of the following DNA indexes:

(1) unidentified persons;

(2) unidentified human remains; and

(3) relatives of, or known reference samples from, missing persons;

and

D. facilitate the use of DNA records by local, state and federal law enforcement agencies and the state medical investigator in the identification and location of missing and unidentified persons or human remains."

Section 6. Section 29-16-3 NMSA 1978 (being Laws 1997, Chapter 105, Section 3) is amended to read:

"29-16-3. 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;

K. "missing persons DNA identification system" means the missing persons DNA identification system established by the DNA Identification Act; and

L. "sample" means a sample of biological material sufficient for DNA testing."

Section 7. Section 29-16-4 NMSA 1978 (being Laws 1997, Chapter 105, Section 4) is amended to read:

"29-16-4. 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 and humanitarian purposes. Those purposes shall include generation of investigative leads, statistical analysis of DNA profiles and identification of missing persons and unidentified human remains. 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;
- (6) adopt rules 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;
- (7) be reimbursed for, pursuant to the DNA Identification Act, the costs of sample collection and DNA testing of samples taken for the purposes of the identification of missing persons and unidentified human remains; and
- (8) establish and administer the missing persons DNA identification system as a part of the DNA identification system.

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 DNA advisory committee."

Section 8. Section 29-16-5 NMSA 1978 (being Laws 1997, Chapter 105, Section 5) is amended to read:

"29-16-5. 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 attorneys association or his designated representative;

(7) the chief public defender or his designated representative;

(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 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 and procedures for the administration and operation of the DNA identification system.

D. The DNA oversight committee shall oversee the establishment and administration of the missing persons DNA identification system as part of the DNA identification system.

E. The DNA oversight committee shall adopt rules and procedures regarding the administration and operation of the missing persons DNA identification system as part of the DNA identification system."

Section 9. Section 29-16-6 NMSA 1978 (being Laws 1997, Chapter 105, Section 6) is amended to read:

"29-16-6. COLLECTION OF SAMPLES.--

A. A covered offender shall provide one or more samples to the administrative center, as follows:

(1) a covered offender convicted on or after July 1, 1997 shall provide a sample immediately upon request of the corrections department so long as the request is made 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;

(2) a covered offender incarcerated on or after July 1, 1997 shall provide a sample immediately upon request of the corrections department so long as the request is made before release from any correctional facility; and

(3) a covered offender on probation or other supervised release on or after July 1, 1997 shall provide a sample immediately upon request of the corrections department so long as the request is made before the end of any period of probation or other supervised release.

B. Samples from unidentified persons or relatives of a missing person shall be provided to the administrative center, as follows:

(1) upon the completion of a permission to search form authorizing the collection of a DNA sample;

(2) upon the receipt of a properly executed search warrant; or

(3) upon the issuance of a court order.

C. Samples from unidentified human remains shall be provided by the state medical investigator.

D. Samples of known reference materials from missing persons shall be provided by the investigating law enforcement agency."

Section 10. Section 29-16-7 NMSA 1978 (being Laws 1997, Chapter 105, Section 7) is amended to read:

"29-16-7. PROCEDURES FOR COLLECTION OF SAMPLES.--

A. The collection of samples pursuant to the provisions of Section 29-16-6 NMSA 1978 shall be conducted in a medically approved manner in accordance with rules and procedures adopted by the DNA oversight committee.

B. A person who collects samples shall be trained in procedures that meet the requirements and standards specified in Subsection A of this section.

C. A person authorized to collect samples and his employer 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 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 by the administrative center."

Section 11. Section 29-16-8 NMSA 1978 (being Laws 1997, Chapter 105, Section 8) is amended to read:

"29-16-8. 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 and the state medical investigator pursuant to the rules 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 developed and adopted by the DNA oversight committee."

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 157

CHAPTER 257

CHAPTER 257, LAWS 2003

AN ACT

RELATING TO CRIMINAL LAW; TOLLING THE STATUTE OF LIMITATIONS FOR PROSECUTIONS REGARDING CRIMINAL SEXUAL PENETRATION; ENACTING A NEW SECTION OF CHAPTER 30, ARTICLE 1 NMSA 1978.

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

Section 1. A new section of Chapter 30, Article 1 NMSA 1978 is enacted to read:

"CRIMINAL SEXUAL PENETRATION--TOLLING OF STATUTE OF LIMITATIONS.--

A. When DNA evidence is available and a suspect has not been identified, the applicable time period for commencing a prosecution pursuant to Section 30-1-8 NMSA 1978 shall not commence to run for an alleged violation of Section 30-9-11 NMSA 1978 until a DNA profile is matched with a suspect.

B. As used in this section, "DNA" means deoxyribonucleic acid."

Section 2. APPLICABILITY.--The provisions of this act are applicable to an alleged violation of Section 30-9-11 NMSA 1978 for which the applicable time period for commencing a prosecution, as provided in Section 30-1-8 NMSA 1978, has not expired as of July 1, 2003.

Section 3. EFFECTIVE DATE.--The effective date of the

provisions of this act is July 1, 2003.

SENATE BILL 470, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 258

CHAPTER 258, LAWS 2003

AN ACT

RELATING TO WORKERS' COMPENSATION; ENACTING A NEW SECTION OF THE WORKERS' COMPENSATION ACT; CREATING A FUND; PROVIDING FOR CLAIMS AGAINST UNINSURED EMPLOYERS; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Workers' Compensation Act is enacted to read:

"UNINSURED EMPLOYERS' FUND--WORKERS' COMPENSATION ADMINISTRATION--ADDITIONAL DUTIES.--

A. The "uninsured employers' fund" is created in the state treasury. The fund shall be administered by the workers' compensation administration as a separate account. The administration shall adopt rules to administer the fund pursuant to the provisions of this section.

B. The fund shall consist of uninsured employers' fees pursuant to this section and all income derived from investment of the fund. Each New Mexico employer or his insurance carrier shall quarterly pay an uninsured employers' fee to the workers' compensation administration amounting to a percentage established by the administration, not to exceed one percent, of the money paid out during that quarter as compensation benefits and medical benefits, exclusive of attorney fees and related benefits. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of this section.

C. The workers' compensation administration shall adopt rules for the assessment of the uninsured employers' fees. The rate shall be determined once before the end of each fiscal year by the workers' compensation administration so as to provide a sufficient income to meet payments from the fund for the next fiscal year; provided that for the first fiscal year the percentage shall be one-half percent. The uninsured employers' fees shall be collected and deposited to the credit of the uninsured employers' fund by the taxation and revenue department in the same manner as for the workers' compensation administration fund created pursuant to Section 52-5-19 NMSA 1978.

D. Money in the fund is appropriated to the workers' compensation administration to pay workers compensation benefits to a person entitled to the benefits when that person's employer has failed to maintain workers' compensation coverage because of fraud, misconduct or other failure to insure or otherwise make compensation payments. For purposes of this subsection, a worker who has affirmatively elected not to accept the provisions of the Workers' Compensation Act shall not be eligible for payment of workers' compensation from the uninsured employers' fund. The director may pay reasonable costs of administering the uninsured employers' fund from the fund, but money in the fund shall not be used for administrative costs unrelated to the fund or any activity of the workers' compensation administration other than as provided in this section. The superintendent of insurance shall examine and audit the fund pursuant to the provisions of Chapter 59A, Article 4 NMSA 1978.

E. The director may authorize payments to a person from the uninsured employers' fund if the injury or cause of incapacity occurs in New Mexico and would be compensable under the Workers' Compensation Act.

F. The uninsured employers' fund, by subrogation, has all the rights, powers and benefits of the employee or the employee's dependents against the employer failing to make the compensation payments.

G. The uninsured employers' fund, subject to approval of the director, shall discharge its obligations by contracting with an independent adjusting company that is licensed and principally located in New Mexico as prescribed by Section 59A-13-11 NMSA 1978 or Chapter 59A, Article 12A NMSA 1978.

H. For the purpose of ensuring the health, safety and welfare of the public, the director or a workers' compensation judge shall:

(1) order the uninsured employer to reimburse the uninsured employers' fund for all benefits paid to or on behalf of an injured employee by the uninsured employers' fund along with interest, costs and attorneys fees; and

(2) impose a penalty against the uninsured employer of not less than fifteen percent nor more than fifty percent of the value of the total award in connection with the claim that shall be paid into the uninsured employers' fund.

I. The liability of the state, the workers' compensation administration and the state treasurer, with respect to payment of any compensation benefits, expenses, fees or disbursement properly chargeable against the uninsured employers' fund, is limited to the assets in the uninsured employers' fund, and they are not otherwise liable for any payment.

J. The uninsured employers' fund shall be considered a payor of last resort within the workers' compensation system. No other payor liable for payments under the Workers' Compensation Act shall have its liabilities affected or discharged by payments from the uninsured employers' fund. Any payments to workers paid by the uninsured employers' fund shall be subject to subrogation and apportionment to the same extent as payments to an injured worker from a third party tortfeasor.

K. In any claim against an employer by the uninsured employers' fund, or by or on behalf of the employee to whom or to whose dependents compensation and other benefits are paid or payable from the uninsured employers' fund, the burden of proof is on the employer or other party in interest objecting to the claim. The claim is presumed to be valid up to the full amount of workers' compensation benefits paid to the employee or the employee's dependents. This subsection applies whether the claim is filed in court or in an adjudicative proceeding under the authority of the workers' compensation administration.

L. Nothing in this section shall be construed to extend exclusive remedy protection pursuant to Section 52-1-6 or 52-1-9 NMSA 1978 to any employer whose injured worker is paid by the uninsured employers' fund.

M. Nothing in this section shall be construed to supersede Section 52-5-10 NMSA 1978."

Section 2. APPROPRIATION.--Five hundred thousand dollars (\$500,000) is appropriated from the workers' compensation fund to the uninsured employers' fund in fiscal year 2004 to carry out the purposes of the uninsured employers' fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the

workers' compensation fund.

SENATE BILL 771, AS AMENDED

CHAPTER 259

CHAPTER 259, LAWS 2003

AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS OF THE NMSA 1978 TO MAKE TECHNICAL REVISIONS.

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

Section 1. Section 52-1-1.1 NMSA 1978 (being Laws 1986, Chapter 22, Section 26, as amended) is amended to read:

"52-1-1.1. DEFINITIONS.--As used in Chapter 52, Articles 1 through 6 NMSA 1978:

A. "director" means the director of the workers' compensation administration;

B. "division" means the workers' compensation administration;

C. "workers' compensation judge" means an individual appointed by the director to act as a workers' compensation judge in the administration of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law;

D. "workman" or "workmen" means worker or workers;

E. "Workmen's Compensation Act" means the Workers' Compensation Act; and

F. "workmen's compensation administration" or "administration" means the workers' compensation administration."

Section 2. Section 52-1-2 NMSA 1978 (being Laws 1929, Chapter 113, Section 2, as amended) is amended to read:

"52-1-2. EMPLOYERS WHO COME WITHIN ACT.--The state and each county, municipality, school district, drainage, irrigation or conservancy district, public institution and administrative board thereof employing workers, every charitable organization employing workers and every private person, firm or corporation engaged in carrying on for the purpose of business or trade within this state, and which employs three or more workers, except as provided in Section 52-1-6 NMSA 1978, shall become liable to and shall pay to any such worker injured by accident arising out of and in the course of his employment and, in case of his death being occasioned thereby, to such person as may be authorized by the director or appointed by a court to receive the same for the benefit of his dependents, compensation in the manner and amount at the times required in the Workers' Compensation Act."

Section 3. Section 52-1-7 NMSA 1978 (being Laws 1975, Chapter 284, Section 4, as amended) is amended to read:

"52-1-7. APPLICATION OF PROVISIONS OF ACT TO CERTAIN EXECUTIVE EMPLOYEES OR SOLE PROPRIETORS.--

A. Notwithstanding any provisions to the contrary in the Workers' Compensation Act, an executive employee of a professional or business corporation or limited liability company, employed by the professional or business corporation or limited liability company as a worker as defined in the Workers' Compensation Act, or a sole proprietor may affirmatively elect not to accept the provisions of the Workers' Compensation Act.

B. Each executive employee or sole proprietor desiring to affirmatively elect not to accept the provisions of the Workers' Compensation Act may do so by filing an election in the office of the director.

C. Each executive employee or sole proprietor desiring to revoke his affirmative election not to accept the provisions of the Workers' Compensation Act may do so by filing a revocation of the affirmative election with the workers' compensation insurer and in the office of the director. The revocation shall become effective thirty days after filing. An executive employee shall cause a copy of the revocation to be mailed to the board of directors of the professional or business corporation or limited liability company.

D. The filing of an affirmative election not to accept the provisions of the Workers' Compensation Act shall create a conclusive presumption that an executive employee or sole proprietor is not covered by the Workers' Compensation Act until the effective date of a revocation filed pursuant to this section. The filing of an affirmative election not to accept the provisions of the Workers' Compensation Act shall apply to all corporations or limited liability companies in which the executive employee has a financial interest.

E. In determining the number of workers of an employer to determine who comes within the Workers' Compensation Act, an executive employee who has filed an affirmative election not to be subject to the Workers' Compensation Act shall be counted for determining the number of workers employed by such employer.

F. For purposes of this section:

(1) "executive employee" means the chairman of the board, president, vice president, secretary, treasurer or other executive officer, if he owns ten percent or more of the outstanding stock, of the professional or business corporation or a ten percent ownership interest in the limited liability company; and

(2) "sole proprietor" means a single individual who owns all the assets of a business, is solely liable for its debts and employs in the business no person other than himself."

Section 4. Section 52-1-30 NMSA 1978 (being Laws 1987, Chapter 235, Section 14, as amended) is amended to read:

"52-1-30. PAYMENT OF COMPENSATION BENEFITS--INSTALLMENTS.-- Compensation shall be paid by the employer to the worker in installments. The first installment shall be paid not later than fourteen days after the worker has missed seven days of lost time from work, whether or not the days are consecutive. Remaining installments shall be paid twice a month at intervals not more than sixteen days apart in sums as nearly equal as possible, except as provided in Section 52-5-12 NMSA 1978."

Section 5. Section 52-1-43 NMSA 1978 (being Laws 1987, Chapter 235, Section 18, as amended) is amended to read:

"52-1-43. COMPENSATION BENEFITS--INJURY TO SPECIFIC BODY MEMBERS.--

A. For disability resulting from an accidental injury to specific body members, including the loss or loss of use thereof, the worker shall receive the weekly maximum and minimum compensation for disability as provided in Section 52-1-41 NMSA 1978, for the following periods:

Injury Compensation Benefits

Number of Weeks

- (1) one arm at or near shoulder, dextrous member 200 weeks
- (2) one arm at elbow, dextrous member 160 weeks
- (3) one arm between wrist at elbow, dextrous member 150 weeks
- (4) one arm at or near shoulder, nondextrous member 175 weeks
- (5) one arm at elbow, nondextrous member 155 weeks
- (6) one arm between wrist and elbow, nondextrous member 140 weeks
- (7) one hand, dextrous member 125 weeks
- (8) one hand, nondextrous member 110 weeks
- (9) one thumb and the metacarpal bone thereof 55 weeks
- (10) one thumb at the proximal joint 34 weeks
- (11) one thumb at the second distal joint 22 weeks
- (12) one first finger and the metacarpal bone thereof 28 weeks

- (13) one first finger at the proximal joint 22 weeks
- (14) one first finger at the second joint 17 weeks
- (15) one first finger at the distal joint 12 weeks
- (16) one second finger and the metacarpal bone
thereof 22 weeks
- (17) one second finger at the proximal joint 17 weeks
- (18) one second finger at the second joint 12 weeks
- (19) one second finger at the distal joint 10 weeks
- (20) one third finger and the metacarpal bone
thereof 17 weeks
- (21) one third finger at the proximal joint 12 weeks
- (22) one third finger at the second joint 10 weeks
- (23) one third finger at the distal joint 10 weeks
- (24) one fourth finger and the metacarpal bone
thereof 14 weeks
- (25) one fourth finger at the proximal joint 14 weeks
- (26) one fourth finger at the second joint 10 weeks
- (27) one fourth finger at the distal joint 7 weeks
- (28) loss of all fingers on one hand where thumb and
palm remain 70 weeks
- (29) one leg at or near hip joint, so as to preclude
the use of an artificial limb 200 weeks
- (30) one leg at or above the knee, where stump remains

sufficient to permit the use of an artificial limb

150 weeks

(31) one leg between knee and ankle 130 weeks

(32) one foot at the ankle 115 weeks

(33) one great toe with the metatarsal bone
thereof 35 weeks

(34) one great toe at the proximal joint 17 weeks

(35) one great toe at the second joint 12 weeks

(36) one toe other than the great toe with the metatarsal
bone thereof 14 weeks

(37) one toe other than the great toe at the proximal joint 10 weeks

(38) one toe other than the great toe at second or
distal joint 8 weeks

(39) loss of all toes on one foot at proximal joint 40 weeks

(40) eye by enucleation 130 weeks

(41) total blindness of one eye 120 weeks

(42) total deafness in one ear 40 weeks

(43) total deafness in both ears 150 weeks.

B. For a partial loss of use of one of the body members or physical functions listed in Subsection A of this section, the worker shall receive compensation computed on the basis of the degree of such partial loss of use, payable for the number of weeks applicable to total loss or loss of use of that body member or physical function.

C. In cases of actual amputation of the arm or leg, the workers' compensation judge in his discretion may award compensation benefits in excess of those provided in Subsection A of this section if there is substantial evidence to support a finding that, because of the worker's advanced age, lack of education or lack of training, he has in fact a partial disability which will disable him longer than the time

specified in the schedule in Subsection A of this section. The additional compensation period may not in any event exceed twice the time specified in the schedule in Subsection A of this section for such injury.

D. In determining the worker's compensation benefits payable to a worker under this section for a disability resulting from a scheduled injury, the worker is entitled to be compensated as provided in Subsection A of this section up to the date the worker is released from regular treatment by his primary treating health care provider, as defined in Section 52-4-1 NMSA 1978, if he is in fact totally disabled during that time. Any compensation paid up to that date shall be in addition to the compensation allowed under Subsection A of this section, but in no event shall any worker be entitled to compensation for a period in excess of seven hundred weeks."

Section 6. Section 52-1-66 NMSA 1978 (being Laws 1988, Chapter 119, Section 1, as amended) is amended to read:

"52-1-66. NONRESIDENT EMPLOYERS EMPLOYING WORKERS IN STATE-- REQUIREMENT FOR INSURANCE--ENFORCEMENT.--

A. Every employer not domiciled in the state who employs workers engaged in activities required to be licensed under the Construction Industries Licensing Act and every other employer not domiciled in the state who employs three or more workers within the state, whether that employment is permanent, temporary or transitory and whether the workers are residents or nonresidents of the state, shall comply with the provisions of Section 52-1-4 NMSA 1978 and, unless self-insured, shall obtain a workers' compensation insurance policy, or an endorsement to an existing policy, issued in accordance with the provisions of Section 59A-17-10.1 NMSA 1978. An employer who does not comply with the foregoing requirement shall be enjoined from doing business in the state pursuant to Section 52-1-62 NMSA 1978 and shall be barred from recovery by legal action for labor or materials furnished during any period of time in which he was not in compliance with the requirements of this section, and, if the noncomplying employment is in an activity for which the employer is licensed under the provisions of the Construction Industries Licensing Act, the employer's license is subject to revocation or suspension for the violation.

B. The construction industries division of the regulation and licensing department shall promulgate rules and regulations to insure compliance with Subsection A of this section."

Section 7. Section 52-3-20 NMSA 1978 (being Laws 1965, Chapter 299, Section 7, as amended) is amended to read:

"52-3-20. PAYMENT OF BENEFITS IN INSTALLMENTS.--Benefits shall be paid by the employer to the worker in installments. The first installment shall be paid not later than fourteen days after the worker has missed seven days of lost time from work, whether or not the days are consecutive. Remaining installments shall be paid twice a

month at intervals not more than sixteen days apart, in sums as nearly equal as possible, except as provided in Section 52-5-12 NMSA 1978."

Section 8. Section 52-5-1.2 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 62) is amended to read:

"52-5-1.2. WORKERS' COMPENSATION ADMINISTRATION CREATED.--There is created as an entity of state government the "workers' compensation administration"."

Section 9. Section 52-5-3 NMSA 1978 (being Laws 1986, Chapter 22, Section 29, as amended) is amended to read:

"52-5-3. REPORTS--DATA GATHERING.--

A. The intent of this section is to allow the director to gather data and conduct studies to evaluate the workers' compensation and occupational disease disablement system in New Mexico. This includes evaluating the benefits structure and the costs incurred under each version of the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law. To this end, the director shall establish baseline data against which to assess the changes in the law.

B. The director shall independently evaluate insurance industry data pertaining to workers' compensation and occupational disease disablement claims and payments, as well as other information the director believes to be necessary and relevant to a thorough evaluation of the system's effectiveness. In addition to data generated by insurance industry representatives and organizations, the director shall collect data from employers, claimants and other relevant parties.

C. Unless otherwise provided by law, the director shall have access to insurance industry information that contains workers' compensation and occupational disease disablement claim data as the director determines is necessary to carry out the provisions of this section.

D. The director shall have access to files and records of:

(1) the labor department that pertain to:

employers;

(a) the name and number of employees reported by

(b) employers' mailing addresses;

(c) federal identification numbers; and

(d) general wage information;

(2) the insurance division of the public regulation commission that pertain to:

- (a) historical insurance classification rates and total premiums paid during given periods of time;
- (b) insurers licensed to underwrite casualty insurance; and
- (c) records of group self-insurers;

(3) the human services department that include names, addresses and other identifying information of recipients of benefits and services pertaining to income support;

(4) the taxation and revenue department that identify employers paying workers' compensation assessments in accordance with Section 52-5-19 NMSA 1978; and

(5) the motor vehicle division of the taxation and revenue department that pertain to the identity of licensed drivers and the ownership of motor vehicles.

E. Information that is confidential under state law shall be accessible to the director and shall remain confidential.

F. The director shall prepare an annual report. He shall publish in that report and in other reports as he deems appropriate such statistical and informational reports and analyses based on reports and records available as, in his opinion, will be useful in increasing public understanding of the purposes, effectiveness, costs, coverage and administrative procedures of workers' compensation and in providing basic information regarding the occurrence and sources of work injuries or disablements to public and private agencies engaged in industrial injury prevention activities. The reports shall include information concerning the nature and frequency of injuries and occupational diseases sustained and the resulting benefits, costs and other factors that are important to furthering the intent of this section."

Section 10. Section 52-5-12 NMSA 1978 (being Laws 1986, Chapter 22, Section 38, as amended) is amended to read:

"52-5-12. PAYMENT--PERIODIC OR LUMP SUM.--

A. It is stated policy for the administration of the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law that it is in the best interest of the injured worker or disabled employee that he receive benefit payments on a periodic basis. Except as provided in Subsections B, C and D of this section, lump-

sum payments in exchange for the release of the employer from liability for future payments of compensation or medical benefits shall not be allowed.

B. With the approval of the workers' compensation judge, a worker may elect to receive compensation benefits to which he is entitled in a lump sum if he has returned to work for at least six months, earning at least eighty percent of the average weekly wage he earned at the time of injury or disablement. If a worker receives his benefit income in a lump sum, he is not entitled to any additional benefit income for the compensable injury or disablement and he shall only receive that portion of the benefit income that is attributable to the impairment rating as determined in Section 52-1-24 NMSA 1978. In making lump-sum payments, the payment due the worker shall not be discounted at a rate greater than a sum equal to the present value of all future payments of compensation computed at a five-percent discount compounded annually.

C. After maximum medical improvement and with the approval of the workers' compensation judge, a worker may elect to receive a partial lump-sum payment of workers' compensation benefits for the sole purpose of paying debts that may have accumulated during the course of the injured or disabled worker's disability.

D. If an insurer pays a lump-sum payment to an injured or disabled worker without the approval of a workers' compensation judge and if at a later date benefits are due for the injured or disabled worker's claim, the insurer alone shall be liable for that claim and shall not in any manner, including rate determinations and the employer's experience modifier, pass on the cost of the benefits due to the employer.

E. If the compensation benefit to which a worker is entitled is less than fifty dollars (\$50.00) per week, any party may petition the workers' compensation judge to consolidate that payment into quarterly installments.

F. Periodic compensation payments under the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law for disability arising from primary mental impairments or secondary mental impairments shall be paid as incurred and shall not be included in any lump-sum payments."

Section 11. Section 52-6-24 NMSA 1978 (being Laws 1986, Chapter 22, Section 98) is amended to read:

"52-6-24. NOTICE AND HEARING--APPEAL.--Notice and hearing required by the provisions of Sections 52-6-21, 52-6-22 and 52-6-23 NMSA 1978 shall be given and held pursuant to the applicable provisions of Chapter 59A, Article 4 NMSA 1978. A party may appeal from an order of the director made after a hearing, pursuant to Section 39-3-1.1 NMSA 1978."

CHAPTER 260

CHAPTER 260, LAWS 2003

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE LAW ENFORCEMENT SAFE PURSUIT ACT; REQUIRING TRAINING AND POLICY FORMULATION REGARDING HIGH SPEED PURSUITS; CREATING THE CRIME OF AGGRAVATED FLEEING A LAW ENFORCEMENT OFFICER.

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

Section 1. SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Law Enforcement Safe Pursuit Act".

Section 2. DEFINITION.--As used in the Law Enforcement Safe Pursuit Act, "high speed pursuit" means an attempt by a law enforcement officer in an authorized emergency vehicle to apprehend an occupant of a motor vehicle, the driver of which is actively attempting to avoid apprehension by exceeding the speed limit.

Section 3. POLICE TRAINING.--

A. No later than December 31, 2004, the New Mexico law enforcement academy board shall develop and incorporate into the basic law enforcement training required pursuant to the Law Enforcement Training Act a course of instruction of at least sixteen hours concerning the safe initiation and conduct of high speed pursuits.

B. The course of instruction shall emphasize the importance of protecting the public at all times and the need to balance the known offense and risk posed by a fleeing suspect against the danger to law enforcement officers and other people by initiating a high speed pursuit.

C. The course of instruction shall include adequate consideration of each of the following subjects:

- (1) when to initiate a high speed pursuit;
- (2) when to terminate a high speed pursuit;
- (3) evaluating risks due to conditions of the vehicle, driver, roadway, weather and traffic during a high speed pursuit;

(4) evaluating dangers to uninvolved motorists and bystanders during a high speed pursuit;

(5) the number of law enforcement units permitted to participate in the high speed pursuit;

(6) the responsibilities of primary, secondary and supervisory law enforcement units during a high speed pursuit;

(7) proper communication and coordination procedures when a high speed pursuit enters another law enforcement agency's jurisdiction, including a tribal jurisdiction;

(8) driving tactics during a high speed pursuit;

(9) communications during a high speed pursuit;

(10) capture of suspects following a high speed pursuit;

(11) supervisory responsibilities during a high speed pursuit;

(12) use of blocking, ramming, boxing and roadblocks as high speed pursuit tactics;

(13) use of alternative methods and technologies for apprehending suspects during a high speed pursuit; and

(14) preparing a report and evaluation and analysis of a high speed pursuit after it has concluded.

D. The New Mexico law enforcement academy board shall develop the program of instruction, learning and performance objectives and standards for training in conjunction with appropriate groups and individuals that have an interest in and expertise regarding high speed pursuits, including law enforcement agencies, law enforcement academy instructors, experts on the subject and members of the public.

E. In-service law enforcement training, as required pursuant to Section 29-7-7.1 NMSA 1978, shall include at least four hours of instruction that conform with the requirements set forth in Subsection C of this section.

F. Each certified regional law enforcement training facility shall incorporate into its basic law enforcement training and in-service law enforcement training a course of training in the safe initiation and conduct of high speed pursuits that is comparable to or exceeds the standards of the course of instruction developed by the New Mexico law enforcement academy board.

Section 4. PURSUIT POLICIES.--

A. The chief law enforcement officer of every state, county and municipal law enforcement agency shall establish and enforce a written policy governing the conduct of law enforcement officers employed by the agency who are involved in high speed pursuits. A copy of the written policy shall be submitted to the director of the New Mexico law enforcement academy and the traffic safety bureau of the state highway and transportation department.

B. The policy shall specify, at a minimum:

(1) the conditions under which a law enforcement officer may engage in a high speed pursuit and the conditions when the officer shall terminate a high speed pursuit;

(2) measures other than a high speed pursuit that may be employed to apprehend a suspect in a fleeing motor vehicle or to impede the movement of the vehicle;

(3) the coordination and responsibility, including control over the high speed pursuit, of supervisory personnel and the law enforcement officers engaged in the pursuit; and

(4) the procedures to be followed to notify and coordinate high speed pursuits with law enforcement agencies in other jurisdictions, including tribal jurisdictions.

C. The written policy shall, at a minimum, require that:

(1) a law enforcement officer may initiate a high speed pursuit to apprehend a suspect who the officer has reasonable grounds to believe poses a clear and immediate threat of death or serious injury to others or who the officer has probable cause to believe poses a clear and immediate threat to the safety of others that is ongoing and that existed prior to the high speed pursuit;

(2) a law enforcement officer shall not initiate or continue a high speed pursuit when the immediate danger to the officer and the public created by the high speed pursuit exceeds the immediate danger to the public if the occupants of the motor vehicle being pursued remain at large;

(3) when deciding whether to initiate or continue a high speed pursuit, the following factors, at a minimum, shall be taken into consideration:

(a) the seriousness of the offense for which the high speed pursuit was initiated;

(b) whether a suspect poses a clear and immediate threat of death or serious injury to others;

(c) road, weather, environmental and vehicle conditions;

(d) the amount of motor vehicle and pedestrian traffic; and

(e) knowledge of the suspect's identity, possible destination and previous activities that may make apprehension at a later time feasible; and

(4) no more than two law enforcement vehicles shall become actively involved in a high speed pursuit, unless specifically authorized by a supervisor.

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

"AGGRAVATED FLEEING A LAW ENFORCEMENT OFFICER.--

A. Aggravated fleeing a law enforcement officer consists of a person willfully and carelessly driving his vehicle in a manner that endangers the life of another person after being given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed law enforcement officer in an appropriately marked law enforcement vehicle in pursuit in accordance with the provisions of the Law Enforcement Safe Pursuit Act.

B. Whoever commits aggravated fleeing a law enforcement officer is guilty of a fourth degree felony."

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 30, AS AMENDED

CHAPTER 261

CHAPTER 261, LAWS 2003

AN ACT

RELATING TO PUBLIC SAFETY; REQUIRING THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO FINGERPRINT OPERATORS, STAFF AND EMPLOYEES OF CHILD CARE FACILITIES AND FOSTER PARENTS; PROVIDING LIMITS ON THE USE OF CRIMINAL HISTORY RECORDS USED TO CONDUCT

BACKGROUND CHECKS; PROVIDING PENALTIES FOR RELEASE OF INFORMATION; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 32A-15-1 NMSA 1978 (being Laws 1985, Chapter 103, Section 1 and also Laws 1985, Chapter 140, Section 1) is amended to read:

"32A-15-1. SHORT TITLE.--Chapter 32A, Article 15 NMSA 1978 may be cited as the "New Mexico Children's and Juvenile Facility Criminal Records Screening Act"."

Section 2. Section 32A-15-3 NMSA 1978 (being Laws 1985, Chapter 103, Section 3 and also Laws 1985, Chapter 140, Section 3, as amended) is amended to read:

"32A-15-3. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND CHECKS.--

A. Nationwide criminal history record checks shall be conducted on all operators, staff and employees and prospective operators, staff and employees of child care facilities, including every facility or program that has primary custody of children for twenty hours or more per week, and juvenile detention, correction or treatment facilities. The objective of conducting the record checks is to protect the children involved and promote the children's safety and welfare while receiving service from the facilities and programs.

B. The department shall fingerprint all operators, staff and employees and prospective operators, staff and employees of child care facilities and all prospective foster parents and licensed foster parents. The department shall conduct a background check of all operators, staff and employees and prospective operators, staff and employees of child care facilities and all prospective foster parents and licensed foster parents by submitting a fingerprint card for those individuals to the department of public safety and the federal bureau of investigation.

C. Criminal history records obtained by the department pursuant to the provisions of this section are confidential. The department is authorized to use criminal history records obtained from the federal bureau of investigation to conduct background checks on prospective operators, staff and employees of child care facilities and foster parents.

D. Criminal history records obtained pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other

person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions 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. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 629, AS AMENDED

CHAPTER 262

CHAPTER 262, LAWS 2003

AN ACT

RELATING TO LABOR; CHANGING THE STATE MINIMUM WAGE TO EQUAL THE FEDERAL MINIMUM WAGE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 50-4-22 NMSA 1978 (being Laws 1955, Chapter 200, Section 3, as amended) is amended to read:

"50-4-22. MINIMUM WAGES.--

A. An employer, except as provided in Section 50-4-21 NMSA 1978, shall pay the minimum wage rate of five dollars fifteen cents (\$5.15) an hour, except that an employer furnishing food, utilities, supplies or housing to an employee who is engaged in agriculture may deduct the reasonable value of such furnished items from any wages due to the employee.

B. All employees covered by Subsection A of this section who customarily and regularly receive more than thirty dollars (\$30.00) a month in tips shall be paid a minimum hourly wage of two dollars twelve and one-half cents (\$2.125). The employer may consider tips as part of wages, but such a wage credit shall not exceed fifty percent of the minimum wage. All tips received by such employees shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees.

C. An employee covered by the provisions of Subsection A of this section shall not be required to work more than forty hours in any week of seven days, unless he is paid one and one-half times his regular hourly rate of pay for all hours worked in excess of forty hours. For an employee who is paid a fixed salary for fluctuating hours and who is employed by an employer a majority of whose business in New Mexico consists of providing investigative services to the federal government, the hourly rate may be calculated in accordance with the provisions of the federal Fair Labor Standards Act and the regulations pursuant to that act; provided that in no case shall the hourly rate be less than the federal minimum wage."

HOUSE BILL 38, AS AMENDED

CHAPTER 263

CHAPTER 263, LAWS 2003

AN ACT

RELATING TO INSURANCE; PROVIDING FOR REGULATION OF CONTROLLED INSURANCE PLANS; AMENDING THE WORKERS' COMPENSATION ACT; PROVIDING A PENALTY.

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

Section 1. Section 52-1-1.1 NMSA 1978 (being Laws 1986, Chapter 22, Section 26, as amended) is amended to read:

"52-1-1.1. DEFINITIONS.--As used in Chapter 52, Articles 1 through 6 NMSA 1978:

A. "controlled insurance plan" means a plan of insurance coverage that is established by an owner or principal contractor that requires participation by contractors or subcontractors who are engaged in the construction project, including coverage plans that are for a fixed term of coverage on a single construction site;

B. "director" means the director of the workers' compensation administration;

C. "division" means the workers' compensation administration;

D. "rolling wrap-up or consolidated insurance plan" means coverage for an ongoing project or series of projects in which the common insurance program remains

in place indefinitely and contracted work is simply added as it occurs under the control of one owner or principal contractor;

E. "workers' compensation judge" means an individual appointed by the director to act as a workers' compensation judge in the administration of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law;

F. "workman" or "workmen" means worker or workers;

G. "Workmen's Compensation Act" means the Workers' Compensation Act; and

H. "workmen's compensation administration" or "administration" means the workers' compensation administration administratively attached to the labor department."

Section 2. A new section of the Workers' Compensation Act is enacted to read:

"CONTROLLED INSURANCE PLAN--PENALTY.--

A. An owner or the principal contractor of a construction project may establish and administer a controlled insurance plan, provided the covered project is a construction project, a plant expansion or real property improvements within New Mexico with an aggregate construction value in excess of one hundred fifty million dollars (\$150,000,000) expended within a five-year period. As used in this section, "aggregate construction value" includes design, utilities, site excavation, construction costs of improvements to real property and acquisition of equipment and furnishings but does not include the cost of fees or charges associated with financing the construction project.

B. Rolling wrap-ups are prohibited. Controlled insurance plans covering non-contiguous construction sites are prohibited.

C. The owner shall include in any request for proposals for bids a notice that participation in a controlled insurance plan is a requirement of the bid and shall provide a copy of the specifications of the controlled insurance plan. The specifications shall include a statement of the bidding contractor's or subcontractor's responsibilities relative to the plan.

D. A dispute regarding which workers' compensation coverage or insurer is responsible shall be resolved by the administration. An administrative or judicial finding shall include appropriate reimbursement of benefit payments and expenses. For disputed cases as described herein, initial benefits shall be provided by the controlled insurance plan until such time as the coverage dispute is resolved.

E. An owner or principal contractor who enters into a contract for a controlled insurance plan shall file a copy of the contract and evidence of compliance with the requirements of this section with the superintendent of insurance and the workers' compensation administration at least thirty days before the date on which the owner is to begin receiving bids or requests for proposals on the project.

F. An owner or principal contractor using a controlled insurance plan shall distribute any project performance-based refunded premium or dividend to each participating contractor and subcontractor on a proportional basis if provided in the construction contract.

G. An owner or principal contractor shall provide for a safety plan for an employee engaged in the construction project when the employee is present at the construction project site. The owner or principal contractor of the construction project shall develop and carry out a health and safety program approved by the workers' compensation administration. The plan shall include a protocol that encourages return to work guidelines pursuant to the Workers' Compensation Act.

H. The owner or principal contractor of a construction project that uses a controlled insurance plan shall:

(1) establish a method for timely reporting of job-related injuries to the employer, the insured and the administration;

(2) provide modifier experienced units statistical rating information and any other statistical information required by the superintendent of insurance for all contractors and subcontractors, including losses and payroll, to the appropriate rating service within six months following the end of the annual policy period;

(3) provide contractors or subcontractors or their representatives with actual and specific payroll audit data generated under the controlled insurance plan, as would be customarily provided to the employer from a non-controlled insurance plan; and

(4) provide the same access to information on injured employees as would customarily be available to the employer from a non-controlled insurance plan.

I. In addition to any other penalties provided under the law, a person found to have violated any requirement of this section shall be subject to a penalty pursuant to Section 52-1-61 NMSA 1978."

Section 3. Section 52-5-4 NMSA 1978 (being Laws 1986, Chapter 22, Section 30, as amended) is amended to read:

"52-5-4. AUTHORITY TO ADOPT RULES, REGULATIONS AND FEE SCHEDULES.--

A. The director is authorized to adopt reasonable rules and regulations, after notice and public hearing, for effecting the purposes of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law. All rules and regulations shall be published upon adoption and be made available to the public and, if not inconsistent with law, shall be binding on the administration of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law. All rules and regulations adopted shall be filed in accordance with the State Rules Act.

B. Such rules and regulations shall include provisions for procedures in the nature of conferences or other techniques to dispose of cases informally or to expedite claim adjudication, narrow issues and simplify the methods of proof at hearings.

C. The director shall promulgate and enforce schedules of reimbursement for such nonprofessional services as providing testimony and depositions, the production of records or the completion of medical capacity forms to health care providers as defined in Section 52-4-1 NMSA 1978 as he deems appropriate and necessary in the administration of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law.

D. The director shall adopt rules for approval and establishment of controlled insurance plans, including performance standards compliance enforcement. In an advisory role only to participate in the rulemaking process, the director shall provide for the participation of:

- (1) general contractors;
- (2) subcontractors;
- (3) organized labor;
- (4) municipalities;
- (5) counties; and
- (6) business."

HOUSE BUSINESS AND INDUSTRY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 281, AS AMENDED

CHAPTER 264

CHAPTER 264, LAWS 2003

AN ACT

RELATING TO BUSINESS LICENSES; DELETING REFERENCES TO SPECIFIC CODES IN THE CONSTRUCTION INDUSTRIES LICENSING ACT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 60-13-2 NMSA 1978 (being Laws 1967, Chapter 199, Section 2, as amended) is amended to read:

"60-13-2. GENERAL DEFINITIONS.--As used in the Construction Industries Licensing Act:

A. "division" means the construction industries division of the regulation and licensing department;

B. "trade bureau" means the electrical bureau, the mechanical bureau, the general construction bureau or the liquefied petroleum gas bureau of the division;

C. "jurisdictional conflict" means any conflict between or among trade bureaus as to the exercise of jurisdiction over an occupation or trade for which a license is required under the provisions of the Construction Industries Licensing Act;

D. "person" includes an individual, firm, partnership, corporation, association or other organization, or any combination thereof;

E. "qualifying party" means any individual who submits to the examination for a license to be issued under the Construction Industries Licensing Act and who is responsible for the licensee's compliance with the requirements of that act and with the rules, regulations, codes and standards adopted and promulgated in accordance with that act;

F. "certificate of qualification" means a certificate issued by the division to a qualifying party;

G. "journeyman" means any individual who is properly certified by the electrical bureau or the mechanical bureau, as required by law, to engage in or work at his trade;

H. "apprentice" means an individual who is engaged, as his principal occupation, in learning and assisting in a trade;

I. "wages" means compensation paid to an individual by an employer from which taxes are required to be withheld by federal and state law;

J. "public use" means the use or occupancy of any structure, facility or manufactured commercial unit to which the general public, as distinguished from residents or employees, has access;

K. "bid" means a written or oral offer to contract;

L. "building" means any structure built for use or occupancy by persons or property, including manufactured commercial units and modular homes or premanufactured homes designed to be placed on permanent foundations whether mounted on skids or permanent foundations or whether constructed on or off the site of location;

M. "inspection agency" means a firm, partnership, corporation, association or any combination thereof approved in accordance with regulations as having the personnel and equipment available to adequately inspect for the proper construction of manufactured commercial units, modular homes or premanufactured homes;

N. "director" means the administrative head of the division;

O. "chief" means the administrative head of a trade bureau;

P. "commission" means the construction industries commission;

Q. "manufactured commercial unit" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width that is constructed to be towed on its own chassis and designed so as to be installed without a permanent foundation for use as an office or other commercial purpose and that may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a single unit, but that does not include any movable or portable housing structure over twelve feet in width and forty feet in length that is used for nonresidential purposes. "Manufactured commercial unit" does not include modular or premanufactured homes, built to a nationally recognized standard adopted by the commission and designed to be permanently affixed to real property; and

R. "code" means a body or compilation of provisions or standards adopted by the commission that govern contracting or some aspect of contracting; that provide for safety and protection of life and health; and that are published by a nationally recognized standards association."

Section 2. Section 60-13-44 NMSA 1978 (being Laws 1967, Chapter 199, Section 52, as amended) is amended to read:

"60-13-44. TRADE BUREAUS--STANDARDS--CONFLICTS.--

A. The electrical bureau shall recommend to the commission minimum standards for the installation or use of electrical wiring. The recommendations shall substantially embody the applicable provisions of an electrical code for safety to life and property promulgated by a nationally recognized association and developed through an open, balanced consensus process.

B. The mechanical bureau shall recommend to the commission minimum standards for the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of a mechanical installation. The recommendations shall be in substantial conformity with codes and standards that are developed through an open, balanced consensus process. Manufacturers may choose the independent certification organization they wish to certify their products, if the certification organization is accredited by the American national standards institute or other accreditation organization selected by the commission.

C. The general construction bureau shall recommend to the commission minimum standards for the construction, alteration or repair of buildings, except for those activities within the jurisdiction of the electrical bureau or the mechanical bureau. The recommendations shall substantially embody the applicable provisions of a nationally recognized building code that is developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. The standards shall include the authority to permit or deny occupancy of existing and new buildings or structures and authority to accept or deny the use of materials manufactured within or without the state. The general construction bureau may set minimum fees or charges for conducting tests to verify claims or specifications of manufacturers.

D. The general construction bureau shall recommend to the commission additional specifications for any public building constructed in the state through expenditure of state, county or municipal funds, bonds and other revenues, which specifications shall embody standards making the building accessible to individuals who are physically handicapped, and the specifications shall conform substantially with those contained in a nationally recognized standard for making public facilities accessible to the physically handicapped that is developed through an open, balanced consensus process. All orders and rules recommended by the general construction bureau and adopted by the commission under the provisions of this section shall be printed and distributed to all licensed contractors, architects and engineers and to the governor's committee on concerns of the handicapped. The orders and rules shall take effect on a date fixed by the commission, which shall not be less than thirty days after their adoption by the commission, and shall have the force of law.

E. The general construction bureau shall have the right of review of all specifications of public buildings and the responsibility to ensure compliance with the adopted standards.

F. All political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act. Such codes constitute a minimum requirement for the codes of political subdivisions.

G. The trade bureaus within their respective jurisdictions shall recommend to the commission standards that are developed through an open, balanced consensus process for the installation or use of electrical wiring, the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings intended for use by the physically handicapped or persons requiring special facilities to accommodate the aged. The recommendations shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

H. The trade bureaus within their respective jurisdictions shall recommend to the commission standards for the construction, alteration, repair, use or occupancy of manufactured commercial units, modular homes and premanufactured homes. The recommendations shall substantially embody the applicable provisions or standards for the safety to life, health, welfare and property approved by the nationally recognized standards association and developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. Wherever existing state codes or standards conflict with the codes and standards adopted by the commission under the provisions of this subsection, the provisions of the New Mexico Uniform Building Code, the New Mexico Electrical Code, the New Mexico Plumbing Code or the Natural Gas Code of New Mexico shall exclusively apply and control, except for codes and standards for mobile housing units.

I. Modular homes and premanufactured homes in existence at the time of the effective date of the Construction Industries Licensing Act shall have their use or occupancy continued if such use or occupancy was legal on the effective date of that act, provided such continued use or occupancy is not dangerous to life. Any change in the use or occupancy or any major alteration or repair of a modular home or premanufactured home shall comply with all codes and standards adopted under the Construction Industries Licensing Act.

J. The commission shall review all recommendations made under the provisions of this section and shall by rule adopt standards and codes that substantially comply with the requirements of this section that apply to the recommendations of the trade bureaus."

HOUSE BILL 437, AS AMENDED

CHAPTER 265

CHAPTER 265, LAWS 2003

AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING A CERTAIN DEFINITION; AMENDING THE RESIDUAL PHYSICAL CAPACITY TABLE; PROVIDING FOR INCREASES IN ATTORNEY FEES AND ADVANCED DISCOVERY COSTS.

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

Section 1. Section 52-1-25 NMSA 1978 (being Laws 1987, Chapter 235, Section 11, as amended) is amended to read:

"52-1-25. PERMANENT TOTAL DISABILITY.--

A. As used in the Workers' Compensation Act, "permanent total disability" means:

(1) the permanent and total loss or loss of use of both hands or both arms or both feet or both legs or both eyes or any two of them; or

(2) a brain injury resulting from a single traumatic work-related injury that causes, exclusive of the contribution to the impairment rating arising from any other impairment to any other body part, or any preexisting impairments of any kind, a permanent impairment of thirty percent or more as determined by the current American medical association guide to the evaluation of permanent impairment.

B. In considering a claim for total disability, a workers' compensation judge shall not receive or consider the testimony of a vocational rehabilitation provider offered for the purpose of determining the existence or extent of disability."

Section 2. Section 52-1-26.4 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 15) is amended to read:

"52-1-26.4. PARTIAL DISABILITY DETERMINATION--PHYSICAL CAPACITY MODIFICATION.--

A. The range of the physical capacity modification is one to eight.

B. The award of points to a worker shall be based upon the difference between the physical capacity necessary to perform the worker's usual and customary work and the worker's residual physical capacity. The award of points shall be based upon the following table:

RESIDUAL PHYSICAL CAPACITY

S L M H

PRE-INJURY	S	1	1	1	1
PHYSICAL CAPACITY	L	3	1	1	1
(USUAL AND	M	5	3	1	1
CUSTOMARY WORK)	H	8	5	3	1.

C. For the purposes of this section:

(1) "H" or "heavy" means the ability to lift over fifty pounds occasionally or up to fifty pounds frequently;

(2) "M" or "medium" means the ability to lift up to fifty pounds occasionally or up to twenty-five pounds frequently;

(3) "L" or "light" means the ability to lift up to twenty pounds occasionally or up to ten pounds frequently. Even though the weight lifted may be only a negligible amount, a job is in this category when it requires walking or standing to a significant degree or when it involves sitting most of the time with a degree of pushing and pulling of arm or leg controls or both; and

(4) "S" or "sedentary" means the ability to lift up to ten pounds occasionally or up to five pounds frequently. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required only occasionally and other sedentary criteria are met.

D. The determination of a worker's residual physical capacity shall be made by a health care provider defined in Subsection C, E or G of Section 52-4-1 NMSA 1978. If the worker or employer disagrees on who shall make this determination, the dispute shall be resolved in accordance with the provisions set forth in Section 52-1-51 NMSA 1978."

Section 3. Section 52-1-54 NMSA 1978 (being Laws 1987, Chapter 235, Section 24, as amended) is amended to read:

"52-1-54. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY COSTS--OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

A. It is unlawful for any person to receive or agree to receive any fees or payment directly or indirectly in connection with any claim for compensation under the Workers' Compensation Act except as provided in this section.

B. In all cases where the jurisdiction of the workers' compensation administration is invoked to approve a settlement of a compensation claim under the Workers' Compensation Act, the director or workers' compensation judge, unless the claimant is represented by an attorney, may in his discretion appoint an attorney to aid the workers' compensation judge in determining whether the settlement should be approved and, in the event of an appointment, a reasonable fee for the services of the attorney shall be fixed by the workers' compensation judge, subject to the limitation of Subsection I of this section.

C. In all cases where the jurisdiction of the workers' compensation administration is invoked to approve a settlement of a compensation claim under the Workers' Compensation Act and the claimant is represented by an attorney, the total amount paid or to be paid by the employer in settlement of the claim shall be stated in the settlement papers. The workers' compensation judge shall determine and fix a reasonable fee for the claimant's attorney, taking into account any sum previously paid, and the fee fixed by the workers' compensation judge shall be the limit of the fee received or to be received by the attorney in connection with the claim, subject to the limitation of Subsection I of this section.

D. The cost of discovery shall be borne by the party who requests it. If, however, the claimant requests any discovery, the employer shall advance the cost of paying for discovery up to a limit of three thousand dollars (\$3,000). If the claimant substantially prevails on the claim, as determined by a workers' compensation judge, any discovery cost advanced by the employer shall be paid by that employer. If the claimant does not substantially prevail on the claim, as determined by a workers' compensation judge, the employer shall be reimbursed for discovery costs advanced according to a schedule for reimbursement approved by a workers' compensation judge.

E. In all cases where compensation to which any person is entitled under the provisions of the Workers' Compensation Act is refused and the claimant thereafter collects compensation through proceedings before the workers' compensation administration or courts in an amount in excess of the amount offered in writing by an employer five business days or more prior to the informal hearing before the administration, the compensation to be paid the attorney for the claimant shall be fixed by the workers' compensation judge hearing the claim or the courts upon appeal in the amount the workers' compensation judge or courts deem reasonable and proper, subject to the limitation of Subsection I of this section. In determining and fixing a reasonable fee, the workers' compensation judge or courts shall take into consideration:

(1) the sum, if any, offered by the employer:

(a) before the worker's attorney was employed;

(b) after the attorney's employment but before proceedings were commenced; and

(c) in writing five business days or more prior to the informal hearing;

(2) the present value of the award made in the worker's favor; and

(3) any failure of a party to participate in a good-faith manner in informal claim resolution methods adopted by the director.

F. After a recommended resolution has been issued and rejected, but more than ten days before a trial begins, the employer or claimant may serve upon the opposing party an offer to allow a compensation order to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued, subject to the following:

(1) if, within ten days after the service of the offer, the opposing party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof, and thereupon that compensation order may be entered as the workers' compensation judge may direct. An offer not accepted shall be deemed withdrawn, and evidence thereof is not admissible except in a proceeding to determine costs. If the compensation order finally obtained by the party is not more favorable than the offer, that party shall pay the costs incurred by the opposing party after the making of the offer. The fact that an offer has been made but not accepted does not preclude a subsequent offer;

(2) when the liability of one party to another has been determined by a compensation order, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten days prior to the commencement of hearings to determine the amount or extent of liability;

(3) if the employer's offer was greater than the amount awarded by the compensation order, the employer shall not be liable for his fifty percent share of the attorney fees to be paid the worker's attorney and the worker shall pay one hundred percent of the attorney fees due to the worker's attorney; and

(4) if the worker's offer was less than the amount awarded by the compensation order, the employer shall pay one hundred percent of the attorney fees to be paid the worker's attorney, and the worker shall be relieved from any responsibility for paying any portion of the worker's attorney fees.

G. In all actions arising under the provisions of Section 52-1-56 NMSA 1978 where the jurisdiction of the workers' compensation administration is invoked to determine the question whether the claimant's disability has increased or diminished and the claimant is represented by an attorney, the workers' compensation judge or courts upon appeal shall determine and fix a reasonable fee for the services of the

claimant's attorney only if the claimant is successful in establishing that his disability has increased or if the employer is unsuccessful in establishing that the claimant's disability has diminished. The fee when fixed by the workers' compensation judge or courts upon appeal shall be the limit of the fee received or to be received by the attorney for services in the action, subject to the limitation of Subsection I of this section.

H. In determining reasonable attorney fees for a claimant, the workers' compensation judge shall consider only those benefits to the worker that the attorney is responsible for securing. The value of future medical benefits shall not be considered in determining attorney fees.

I. Attorney fees, including, but not limited to, the costs of paralegal services, legal clerk services and any other related legal services costs on behalf of a claimant or an employer for a single accidental injury claim, including representation before the workers' compensation administration and the courts on appeal, shall not exceed sixteen thousand five hundred dollars (\$16,500). This limitation applies whether the claimant or employer has one or more attorneys representing him and applies as a cumulative limitation on compensation for all legal services rendered in all proceedings and other matters directly related to a single accidental injury to a claimant. The workers' compensation judge may exceed the maximum amount stated in this subsection in awarding a reasonable attorney fee if he finds that a claimant, an insurer or an employer acted in bad faith with regard to handling the injured worker's claim and the injured worker or employer has suffered economic loss as a result. However, in no case shall this additional amount exceed two thousand five hundred dollars (\$2,500). As used in this subsection, "bad faith" means conduct by the claimant, insurer or employer in the handling of a claim that amounts to fraud, malice, oppression or willful, wanton or reckless disregard of the rights of the worker or employer. Any determination of bad faith shall be made by the workers' compensation judge through a separate fact-finding proceeding.

J. Except as provided for in Paragraphs (3) and (4) of Subsection F of this section, the payment of a claimant's attorney fees determined under this section shall be shared equally by the worker and the employer.

K. It is unlawful for any person except a licensed attorney to receive or agree to receive any fee or payment for legal services in connection with any claim for compensation under the Workers' Compensation Act.

L. Nothing in this section applies to agents, excluding attorneys, representing employers, insurance carriers or the subsequent injury fund in any matter arising from a claim under the Workers' Compensation Act.

M. No attorney fees shall be paid until the claim has been settled or adjudged.

N. Every person violating the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500), to which may be added imprisonment in the county jail for a term not exceeding ninety days.

O. Nothing in this section shall restrict a claimant from being represented before the workers' compensation administration by a nonattorney as long as that nonattorney receives no compensation for that representation from the claimant."

Section 4. APPLICABILITY.--The provisions of this act are effective for all injuries in which the worker reaches maximum medical improvement on or after July 1, 2003.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 501, 506 AND 613, AS AMENDED

CHAPTER 266

CHAPTER 266, LAWS 2003

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES; AMENDING THE CONSTRUCTION INDUSTRIES LICENSING ACT TO INCREASE THE PENALTY FOR FAILURE TO DISCLOSE CERTAIN INFORMATION.

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

Section 1. Section 60-13-19 NMSA 1978 (being Laws 1978, Chapter 78, Section 1, as amended) is amended to read:

"60-13-19. DIVISION--EVIDENCE OF POSSESSION--PENALTY.--

A. The licensee shall exhibit satisfactory evidence of the possession of a license on demand and shall clearly indicate his contractor's license number on all written bids and when applying for a building permit.

B. A contractor who fails to indicate his contractor's license number clearly on all written bids and when applying for a building permit shall be assessed a penalty fee of one hundred fifty dollars (\$150) by the division. The fee shall be payable to the code jurisdiction or political subdivision that issued the permit or in which the work for which the bid is submitted is or would be permitted.

C. Before work is commenced, a contract is signed or funds are paid for any residential contracting, the contractor shall disclose in writing to the owner, on a form approved by the division, that the license issued and the bond or other proof of responsibility required pursuant to the Construction Industries Licensing Act does not protect the consumer if the contractor defaults. Any contractor who fails to make the disclosure required by this subsection shall be assessed a fee by the division in an amount not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) as determined by the division. The fee shall be payable to the division."

HOUSE BILL 609

CHAPTER 267

CHAPTER 267, LAWS 2003

AN ACT

RELATING TO PROCUREMENT; AMENDING AND ENACTING SECTIONS OF THE PROCUREMENT CODE; EXPANDING THE APPLICABILITY OF COMPETITIVE PROPOSAL CONTRACTING; PROVIDING FOR AN ADVISORY COMMITTEE.

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

Section 1. Section 13-1-67 NMSA 1978 (being Laws 1984, Chapter 65, Section 40, as amended) is amended to read:

"13-1-67. DEFINITION--LOCAL PUBLIC BODY.--"Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code."

Section 2. 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.--

A. Except as provided in Subsection G of Section 13-1-119.1 NMSA 1978, 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, sealed proposals may also be used for contracts for construction and facility maintenance, service and repairs. 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.

B. The governor shall appoint an advisory committee to provide assistance in development of rules for the implementation of this section. The advisory committee shall include one representative from the New Mexico building and construction trades council, American federation of labor - congress for industrial organizations, and a representative of:

branch; (1) the associated general contractors - New Mexico building

association; (2) the New Mexico chapter of the national electrical contractors

(3) the New Mexico sheet metal contractors' association;

(4) the mechanical contractors association of New Mexico;

(5) the New Mexico association of counties;

(6) the New Mexico municipal league;

(7) the state board of education;

(8) the construction industries commission;

(9) the Rio Grande underground contractors association;

(10) the American subcontractors association of New Mexico;

(11) the higher education community; and

(12) the general public, who is not associated with the construction industry and who will serve as chair of the committee."

HOUSE BILL 573, AS AMENDED

CHAPTER 268

CHAPTER 268, LAWS 2003

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; CREATING A NEW RETIREMENT PLAN FOR MUNICIPAL DETENTION OFFICERS; REVISING THE STATE POLICE MEMBER COVERAGE PLAN 1 TO INCLUDE ADULT CORRECTIONAL OFFICERS; PROVIDING FOR ELECTIONS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE PUBLIC EMPLOYEES RETIREMENT ACT.

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

Section 1. Section 10-11-2 NMSA 1978 (being Laws 1987, Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees Retirement Act:

A. "accumulated member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited to that account;

B. "affiliated public employer" means the state and any public employer affiliated with the association as provided in the Public Employees Retirement Act, but does not include an employer pursuant to the Magistrate Retirement Act, the Judicial Retirement Act or the Educational Retirement Act;

C. "association" means the public employees retirement association established under the Public Employees Retirement Act;

D. "disability retired member" means a retired member who is receiving a pension pursuant to the disability retirement provisions of the Public Employees Retirement Act;

E. "disability retirement pension" means the pension paid pursuant to the disability retirement provisions of the Public Employees Retirement Act;

F. "educational retirement system" means that retirement system provided for in the Educational Retirement Act;

G. "employee" means any employee of an affiliated public employer;

H. "federal social security program" means that program or those programs created and administered pursuant to the act of congress approved August 14, 1935, Chapter 531, 49 Stat. 620, as that act may be amended;

I. "final average salary" means the final average salary calculated in accordance with the provisions of the applicable coverage plan;

J. "form of payment" means the applicable form of payment of a pension provided for in Section 10-11-117 NMSA 1978;

K. "former member" means a person who was previously employed by an affiliated public employer, who has terminated that employment and who has received a refund of member contributions;

L. "fund" means the funds included under the Public Employees Retirement Act;

M. "member" means a currently employed, contributing employee of an affiliated public employer, or a person who has been but is not currently employed by an affiliated public employer, who has not retired and who has not received a refund of member contributions; "member" also includes the following:

(1) "adult correctional officer member" means a member who is an adult correctional officer or an adult correctional officer specialist employed by a correctional facility of the corrections department or its successor agency;

(2) "hazardous duty member" means a member who is a juvenile correctional officer employed by the children, youth and families department or its successor agency;

(3) "municipal detention officer member" means a member who is employed by an affiliated public employer other than the state and who has inmate custodial responsibilities at a facility used for the confinement of persons charged with or convicted of a violation of a law or ordinance;

(4) "municipal fire member" means any member who is employed as a full-time nonvolunteer firefighter by an affiliated public employer and who has taken the oath prescribed for firefighters;

(5) "municipal police member" means any member who is employed as a police officer by an affiliated public employer, other than the state, and who has taken the oath prescribed for police officers; and

(6) "state police member" means any member who is an officer of the New Mexico state police and who has taken the oath prescribed for such officers;

N. "membership" means membership in the association;

O. "pension" means a series of monthly payments to a retired member or survivor beneficiary as provided in the Public Employees Retirement Act;

P. "public employer" means the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, regional housing authority, soil and water conservation district, entity created pursuant to a joint powers agreement, council of government, conservancy district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer, so long as these entities fall within the meaning of governmental plan as that term is used in Section 414(d) of the Internal Revenue Code of 1986, as amended;

Q. "refund beneficiary" means a person designated by the member, in writing, in the form prescribed by the association, as the person who would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable or who would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

R. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from a state system or the educational retirement system;

S. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

T. "retirement board" means the retirement board provided for in the Public Employees Retirement Act;

U. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered an affiliated public employer. "Salary" shall not include overtime pay, allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes. Salary in excess of the limitations set forth in Section 401(a) (17) of the Internal Revenue Code of 1986, as amended shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount that was allowed to be taken into account under the state retirement system acts in effect on July 1, 1993. For purposes of this subsection, "eligible employee" means an individual who was a member of a state system before the first plan year beginning after December 31, 1995;

V. "state system" means the retirement programs provided for in the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act;

W. "state retirement system acts" means collectively the Public Employees Retirement Act, the Magistrate Retirement Act, the Judicial Retirement Act and the Volunteer Firefighters Retirement Act; and

X. "survivor beneficiary" means a person who receives a pension or who has been designated to be paid a pension as a result of the death of a member or retired member."

Section 2. A new section of the Public Employees Retirement Act is enacted to read:

"MUNICIPAL DETENTION OFFICER MEMBER COVERAGE PLAN 1--APPLICABILITY.--Municipal detention officer member coverage plan 1 is applicable to municipal detention officer members on the later of July 1, 2004 or the first day of the calendar month following certification of the election adopting municipal detention officer member coverage plan 1 by an affirmative vote of the majority of the affiliated public employer's municipal detention officer members. The election shall be conducted by the affiliated public employer. The certification shall be in the form prescribed by the retirement board. The election procedures shall afford all municipal detention officer members of the affiliated public employer an opportunity to vote. An election adopting municipal detention officer member coverage plan 1 for a given affiliated public employer is irrevocable for the purpose of subsequently adopting a coverage plan that would decrease employer or employee contributions with respect to all current and future municipal detention officer members of that affiliated public employer."

Section 3. A new section of the Public Employees Retirement Act is enacted to read:

"MUNICIPAL DETENTION OFFICER MEMBER COVERAGE PLAN 1--AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT--CALCULATION OF CREDITED SERVICE.--

A. Under municipal detention officer member coverage plan 1, the age and service requirements for normal retirement are:

(1) age sixty-five years or older and five or more years of credited service;

(2) age sixty-four years and eight or more years of credited service;

service; (3) age sixty-three years and eleven or more years of credited

service; (4) age sixty-two years and fourteen or more years of credited

service; (5) age sixty-one years and seventeen or more years of credited

(6) age sixty years and twenty or more years of credited service; or

(7) any age and twenty-five or more years of credited service.

B. In calculating credited service for the purposes of determining retirement eligibility and amount of pension, the credited service of a municipal detention officer member shall have actual credited service increased by twenty percent for the purposes of municipal detention officer member coverage plan 1."

Section 4. A new section of the Public Employees Retirement Act is enacted to read:

"MUNICIPAL DETENTION OFFICER MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal detention officer member coverage plan 1, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed eighty percent of the final average salary."

Section 5. A new section of the Public Employees Retirement Act is enacted to read:

"MUNICIPAL DETENTION OFFICER MEMBER COVERAGE PLAN 1--FINAL AVERAGE SALARY.--Under municipal detention officer member coverage plan 1, the final average salary is one thirty-sixth of the greatest aggregate amount of salary paid a member for thirty-six consecutive months of credited service."

Section 6. A new section of the Public Employees Retirement Act is enacted to read:

"MUNICIPAL DETENTION OFFICER MEMBER COVERAGE PLAN 1--MEMBER CONTRIBUTION RATE.--A member under municipal detention officer member coverage plan 1 shall contribute sixteen and sixty-five hundredths percent of salary starting with the first full pay period that ends within the calendar month in which municipal detention officer member coverage plan 1 becomes applicable to the member."

Section 7. A new section of the Public Employees Retirement Act is enacted to read:

"MUNICIPAL DETENTION OFFICER MEMBER COVERAGE PLAN 1--EMPLOYER CONTRIBUTION RATE.--The affiliated public employer shall contribute sixteen and sixty-five hundredths percent of the salary of each member under municipal detention officer member coverage plan 1 starting with the first pay period that ends within the calendar month in which municipal detention officer member coverage plan 1 becomes applicable to the member."

Section 8. A new section of the Public Employees Retirement Act is enacted to read:

"MUNICIPAL DETENTION OFFICER MEMBER COVERAGE PLAN 1--SERVICE CREDIT REQUIRED FOR MUNICIPAL DETENTION OFFICER MEMBERS.--Notwithstanding other provisions of the Public Employees Retirement Act, to qualify for retirement pursuant to municipal detention officer member coverage plan 1, a municipal detention officer member shall have eighteen months of service credit earned under that coverage plan."

Section 9. Section 10-11-27 NMSA 1978 (being Laws 1987, Chapter 253, Section 27) is amended to read:

"10-11-27. STATE POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE PLAN 1--APPLICABILITY.--

A. State police member and adult correctional officer member coverage plan 1 is applicable to state police members who are not specifically covered by another coverage plan and adult correctional officer members. The credited service of a state police member who has held the permanent rank of patrolman or sergeant and does not hold an exempt rank or who is assigned to the aircraft division as a pilot, or of an adult correctional officer member, shall have actual credited service increased by twenty percent for the purposes of state police member and adult correctional officer member coverage plan 1.

B. State police member and adult correctional officer member coverage plan 1 is applicable to adult correctional officer members in the first full pay period after July 1, 2004 if the retirement board certifies to the secretary of state that, of those adult correctional officer members to be covered under state police member and adult correctional officer member coverage plan 1, a majority of the members voting have voted to approve adoption of that plan at an election conducted pursuant to Section 16 of this 2003 act."

Section 10. A new section of the Public Employees Retirement Act, Section 10-11-27.1 NMSA 1978, is enacted to read:

"10-11-27.1. STATE POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE PLAN 1--SERVICE CREDIT REQUIRED.-- Notwithstanding the provisions of Section 10-11-27 NMSA 1978, to qualify for payment under state police member and adult correctional officer member coverage plan 1, an adult correctional officer member shall have eighteen months of service credit earned under the state police member and adult correctional officer member coverage plan 1 subsequent to July 1, 2004."

Section 11. Section 10-11-28 NMSA 1978 (being Laws 1987, Chapter 253, Section 28) is amended to read:

"10-11-28. STATE POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE PLAN 1--AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT.--Under state police member and adult correctional officer member coverage plan 1, the age and service requirements for normal retirement are:

- A. age sixty-five years or older and five or more years of credited service;
- B. age sixty-four years and eight or more years of credited service;
- C. age sixty-three years and eleven or more years of credited service;
- D. age sixty-two years and fourteen or more years of credited service;
- E. age sixty-one years and seventeen or more years of credited service;
- F. age sixty years and twenty or more years of credited service; or
- G. any age and twenty-five or more years of credited service."

Section 12. Section 10-11-29 NMSA 1978 (being Laws 1987, Chapter 253, Section 29) is amended to read:

"10-11-29. STATE POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF PAYMENT A.-- Under state police member and adult correctional officer member coverage plan 1, the amount of pension under form of payment A is equal to three percent of final average salary multiplied by credited service. The amount shall not exceed eighty percent of the final average salary."

Section 13. Section 10-11-30 NMSA 1978 (being Laws 1987, Chapter 253, Section 30) is amended to read:

"10-11-30. STATE POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE PLAN 1--FINAL AVERAGE SALARY.--Under state police

member and adult correctional officer member coverage plan 1, the final average salary is one thirty-sixth of the greatest aggregate amount of salary paid a member for thirty-six consecutive months of credited service. Under state police member and adult correctional officer member coverage plan 1, if a state police member has less than thirty-six months of credited service, the final average salary is the aggregate amount of salary paid a member for the member's period of credited service divided by the member's credited service."

Section 14. Section 10-11-31 NMSA 1978 (being Laws 1987, Chapter 253, Section 31) is amended to read:

"10-11-31. STATE POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE PLAN 1--MEMBER CONTRIBUTION RATE.--A member under state police member and adult correctional officer member coverage plan 1 shall contribute seven and six-tenths percent of salary."

Section 15. Section 10-11-32 NMSA 1978 (being Laws 1987, Chapter 253, Section 32) is amended to read:

"10-11-32. STATE POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE PLAN 1--STATE CONTRIBUTION RATE.--The state shall contribute twenty-five and one-tenth percent of the salary of each member under state police member and adult correctional officer member coverage plan 1."

Section 16. TEMPORARY PROVISION--STATE POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE PLAN 1--ELECTIONS.--On or before October 1, 2003, the retirement board shall conduct an election to submit to adult correctional officer members currently contributing under hazardous duty coverage plan 2 the question of adopting a state police member and adult correctional officer member coverage plan 1. The election shall be conducted in accordance with procedures adopted by the retirement board, and the retirement board shall certify the results of the election to the secretary of state on or before November 1, 2003.

Section 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

COMMITTEE SUBSTITUTE FOR HOUSE

BILL 774 AND SENATE BILL 797, AS AMENDED

CHAPTER 269

CHAPTER 269, LAWS 2003

AN ACT

RELATING TO PUBLIC EMPLOYEES' RETIREMENT; EXPANDING THE APPLICABILITY OF THE STATE POLICE MEMBER COVERAGE PLAN 1; AMENDING AND ENACTING SECTIONS OF THE PUBLIC EMPLOYEES RETIREMENT ACT.

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

Section 1. Section 10-11-27 NMSA 1978 (being Laws 1987, Chapter 253, Section 27) is amended to read:

"10-11-27. STATE POLICE MEMBER COVERAGE PLAN 1--APPLICABILITY.-- State police member coverage plan 1 is applicable to state police members who are not specifically covered by another coverage plan. The credited service of a state police member who has held the permanent rank of patrolman, sergeant, lieutenant or captain and does not hold an exempt rank or who is assigned to the aircraft division as a pilot shall have actual credited service increased by twenty percent for the purposes of state police member coverage plan 1."

Section 2. A new Section 10-11-27.1 NMSA 1978 is enacted to read:

"10-11-27.1. LEGISLATIVE FINDINGS.--The legislature finds that:

A. it is appropriate to recognize the professionalism and dedication of state police officers, who provide an essential service to the citizens of New Mexico;

B. it is appropriate to recognize the hazardous nature of the work performed by state police officers;

C. the spirit of what it takes to be a state police officer is personified by Sergeant Brent H. Bateman, who served with honor as a state police officer for twenty-two years. Sergeant Bateman became ill days after his retirement and passed away a short six months following retirement; and

D. the twenty percent credit towards actual service provided in state police member coverage plan 1 is dedicated to Sergeant Brent H. Bateman and all other officers who have served, and who do serve, as New Mexico state police officers."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 788

CHAPTER 270

CHAPTER 270, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR DISTRIBUTION OF TIRE RECYCLING FEES; INCREASING TIRE RECYCLING FEES; MAKING AN APPROPRIATION.

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

Section 1. Section 66-6-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 336, as amended) is amended to read:

"66-6-1. MOTORCYCLES--REGISTRATION FEES.--

A. For the registration of motorcycles, the department shall collect the following fees for a twelve-month registration period:

(1) for a motorcycle having not more than two wheels in contact with the ground, eleven dollars (\$11.00); and

(2) for a motorcycle having three wheels in contact with the ground or having a sidecar, eleven dollars (\$11.00).

B. In addition to other fees required by this section, the department shall collect for each motorcycle an annual tire recycling fee of one dollar (\$1.00) for a twelve-month registration period."

Section 2. Section 66-6-2 NMSA 1978 (being Laws 1978, Chapter 35, Section 337, as amended) is amended to read:

"66-6-2. PASSENGER VEHICLES--REGISTRATION FEES.--For the registration of motor vehicles other than motorcycles, trucks, buses and tractors, the division shall collect the following fees for each twelve-month registration period:

A. for a vehicle whose gross factory shipping weight is not more than two thousand pounds, twenty dollars (\$20.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is sixteen dollars (\$16.00);

B. for a vehicle whose gross factory shipping weight is more than two thousand but not more than three thousand pounds, twenty-nine dollars (\$29.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is twenty-three dollars (\$23.00);

C. for a vehicle whose gross factory shipping weight is more than three thousand pounds, forty-two dollars (\$42.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is thirty-four dollars (\$34.00); and

D. for a vehicle registered pursuant to the provisions of this section, a tire recycling fee of one dollar fifty cents (\$1.50)."

Section 3. Section 66-6-4 NMSA 1978 (being Laws 1978, Chapter 35, Section 339, as amended by Laws 1994, Chapter 117, Section 20 and also by Laws 1994, Chapter 126, Section 20) is amended to read:

"66-6-4. REGISTRATION FEES--TRUCKS, TRUCK TRACTORS, ROAD TRACTORS AND BUSES.--

A. Within their respective jurisdictions, the motor vehicle division and the motor transportation division of the department of public safety shall charge registration fees for trucks, truck tractors, road tractors and buses, except as otherwise provided by law, according to the schedule of Subsection B of this section.

B. Declared Gross Weight	Fee
001 to 4,000	\$30
4,001 to 6,000	41
6,001 to 8,000	52
8,001 to 10,000	63
10,001 to 12,000	74
12,001 to 14,000	85

14,001 to 16,000	96
16,001 to 18,000	107
18,001 to 20,000	118
20,001 to 22,000	129
22,001 to 24,000	140
24,001 to 26,000	151
26,001 to 48,000	88.50
48,001 and over	129.50.

C. All trucks whose declared gross weight or whose gross vehicle weight is less than twenty-six thousand pounds, after five years of registration, calculated from the date when the vehicle was first registered in this or another state, shall be charged registration fees at eighty percent of the rate set out in Subsection B of this section.

D. All trucks with a gross vehicle weight of more than twenty-six thousand pounds and all truck tractors and road tractors used to tow freight trailers shall be registered on the basis of combination gross vehicle weight.

E. All trucks with a gross vehicle weight of twenty-six thousand pounds or less shall be registered on the basis of gross vehicle weight. A trailer, semitrailer or pole trailer towed by a truck of such gross vehicle weight shall be classified as a utility trailer for registration purposes unless otherwise provided by law.

F. All farm vehicles having a declared gross weight of more than six thousand pounds shall be charged registration fees of two thirds of the rate of the respective fees provided in this section and shall be issued distinctive registration plates. "Farm vehicle" means any vehicle owned by a person whose principal occupation is farming or ranching and which vehicle is used principally in the transportation of farm and ranch products to market and farm and ranch supplies and livestock from the place of purchase to farms and ranches in this state; provided that the vehicle is not used for hire.

G. In addition to other registration fees imposed by this section, beginning July 1, 1994, there is imposed at the time of registration an annual tire recycling fee of one dollar fifty cents (\$1.50) on each vehicle subject to a registration fee pursuant to this section, except for vehicles with a declared gross weight of greater than twenty-six thousand pounds upon which registration fees are imposed by Subsection B of this section.

H. Four percent of registration fees of trucks having from twenty-six thousand one pounds to forty-eight thousand pounds declared gross vehicle weight is to be transferred to the tire recycling fund pursuant to the provisions of Section 66-6-23 NMSA 1978.

I. Five percent of registration fees of trucks in excess of forty-eight thousand pounds declared gross vehicle weight is to be transferred to the tire recycling fund pursuant to the provisions of Section 66-6-23 NMSA 1978."

Section 4. Section 66-6-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 340, as amended by Laws 1994, Chapter 117, Section 21 and also by Laws 1994, Chapter 126, Section 21) is amended to read:

"66-6-5. BUS REGISTRATION FEES.--All buses shall pay the registration fees provided in Section 66-6-4 NMSA 1978 except for school buses and buses operated by religious or nonprofit charitable organizations for the express purpose of the organization, for which the annual registration fee is five dollars (\$5.00). In addition to other registration fees imposed by this section, beginning July 1, 1994, there is imposed at the time of registration an annual tire recycling fee of fifty cents (\$.50) per wheel that is in contact with the ground on each vehicle subject to a registration fee pursuant to this section."

Section 5. Section 66-6-8 NMSA 1978 (being Laws 1978, Chapter 35, Section 343, as amended by Laws 1994, Chapter 117, Section 22 and also by Laws 1994, Chapter 126, Section 22) is amended to read:

"66-6-8. BUS REGISTRATION--AGRICULTURAL LABOR FEES.--

A. A bus that has a normal seating capacity of forty passengers or less and that is used exclusively for the transportation of agricultural laborers may be registered upon payment to the division of a fee of twenty-five dollars (\$25.00).

B. In addition to the registration fee imposed by this section, there is imposed at the time of registration an annual tire recycling fee of fifty cents (\$.50) per wheel that is in contact with the ground on each vehicle subject to a registration fee pursuant to this section.

C. Application for registration of a bus under this section shall be made in the form prescribed by the division and shall be accompanied by an affidavit that the bus will be used exclusively for the transportation of agricultural laborers. Upon registration, the bus is exempt from tariff-filing requirements of the public regulation commission."

Section 6. 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 in the motor vehicle suspense fund, 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:

(a) 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; and

(b) for each such agent determined by the secretary pursuant to Section 66-2-16 NMSA 1978 to have performed ten thousand or more transactions in the preceding fiscal year, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar (\$1.00) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each driver's license, identification card, motor vehicle registration, motorboat registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, 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 Subsection A of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to the fees collected pursuant to Section 66-7-413.4 NMSA 1978;

(b) an amount equal to the fee collected pursuant to Section 66-3-417 NMSA 1978;

(c) 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; and

(d) an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978;

(4) to the local governments road fund, the amount of the fees collected pursuant to Subsection B of Section 66-5-33.1 NMSA 1978 and the remainder of the fees collected pursuant to Subsection A of Section 66-5-408 NMSA 1978;

(5) to the department:

(a) any amounts reimbursed to the department pursuant to Subsection C of Section 66-2-14.1 NMSA 1978;

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

(c) an amount equal to the fees provided for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E of Section 66-2-16 NMSA 1978, Subsections J and K of Section 66-3-6 NMSA 1978 other than the administrative fee, Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(d) the amounts due to the department pursuant to Paragraph (1) of Subsection E of Section 66-3-419 NMSA 1978, Subsection E of Section 66-3-422 NMSA 1978 and Subsection E of Section 66-3-423 NMSA 1978; and

(e) an amount equal to the registration fees collected pursuant to Section 66-6-6.1 NMSA 1978 for the purposes of enforcing the provisions of the Mandatory Financial Responsibility Act and for creating and maintaining a multilanguage noncommercial driver's license testing program;

(6) to each New Mexico institution of higher education, an amount equal to that part of the fees distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-416 NMSA 1978 proportionate to the number of special registration plates issued in the name of the institution to all such special registration plates issued in the name of all institutions;

(7) to the armed forces veterans license fund, the amount to be distributed pursuant to Paragraph (2) of Subsection E of Section 66-3-419 NMSA 1978;

(8) to the children's trust fund, the amount to be distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-420 NMSA 1978;

(9) to the state highway and transportation department, an amount equal to the fees collected pursuant to Section 66-5-35 NMSA 1978;

(10) 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 Subsection D of Section 66-5-44 NMSA 1978;

(11) to the motorcycle training fund, two dollars (\$2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(12) to the tire recycling fund:

(a) fifty cents (\$.50) of the tire recycling fee collected pursuant to the provisions of Section 66-6-1 NMSA 1978;

(b) fifty cents (\$.50) of each of the tire recycling fees collected pursuant to the provisions of Sections 66-6-2 and 66-6-4 NMSA 1978; and

(c) twenty-five cents (\$.25) of each of the tire recycling fees collected pursuant to Sections 66-6-5 and 66-6-8 NMSA 1978;

(13) to the highway infrastructure fund:

(a) fifty cents (\$.50) of the tire recycling fee collected pursuant to the provisions of Section 66-6-1 NMSA 1978;

(b) one dollar (\$1.00) of each of the tire recycling fees collected pursuant to the provisions of Sections 66-6-2 and 66-6-4 NMSA 1978; and

(c) twenty-five cents (\$.25) of each of the tire recycling fees collected pursuant to Sections 66-6-5 and 66-6-8 NMSA 1978;

(14) to each county, an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978 multiplied by a fraction, the numerator of which is the total mileage of public roads maintained by the county and the denominator of which is the total mileage of public roads maintained by all counties in the state; and

(15) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 66-6-6.2 NMSA 1978.

B. The balance, exclusive of unidentified remittances, shall be distributed in accordance with Section 66-6-23.1 NMSA 1978.

C. If any of the paragraphs, subsections or sections referred to in Subsection A of this section are recompiled or otherwise redesignated without a corresponding change to Subsection A of this section, the reference in Subsection A of this section shall be construed to be the recompiled or redesignated paragraph, subsection or section."

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 25, AS AMENDED

CHAPTER 271

CHAPTER 271, LAWS 2003

AN ACT

RELATING TO PUBLIC FINANCE; ALLOWING COUNTY AND MUNICIPAL TREASURERS TO INVEST IN SECURITIES OF AGENCIES SPONSORED BY THE UNITED STATES GOVERNMENT.

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

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 a 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 county or municipal treasurers who have on hand any public money by virtue of their 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.

B. 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 state 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 deposits are made by the treasurer or any other authorized person making the deposits for a board of finance of a public or educational institution, one copy of the receipt or deposit slip shall be retained by the treasurer or authorized person making the deposit and the other copy shall be filed monthly on the first day of each month with that board of finance. When deposits are made by a county or municipal treasurer, one of the duplicate receipts or deposit slips shall be retained by the treasurer 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, 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 that is 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 a county, municipality or school district that 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, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank or the student loan marketing association or are backed by the full faith and credit of the United States government.

G. The treasurer of a class A county or the treasurer of a municipality having a population of more than sixty-five thousand according to the most recent federal decennial census and located within a class A county, with the advice and consent of the boards of finance charged with the supervision and control of the 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 county or municipality that is entrusted to his care and custody and all money not immediately necessary for the public uses of the county or municipality not invested or deposited in banks, savings and loan associations or credit unions in:

(1) shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in fixed income securities or debt instruments that are listed in a nationally recognized, broad-market, fixed-income-securities market index; provided that the investment company or manager has total assets under management of at least one hundred million dollars (\$100,000,000) and provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments;

(2) individual, common or collective trust funds of banks or trust companies that invest in fixed-income securities or debt instruments that are listed in a nationally recognized, broad-market, fixed-income-securities market index; provided that the investment company or manager has total assets under management of at least one hundred million dollars (\$100,000,000) and provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments; or

(3) shares of pooled investment funds managed by the state investment officer, as provided in Subsection G of Section 6-8-7 NMSA 1978; provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments.

H. 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 that prior to July 1, 1994 had enacted ordinances authorizing the investment of repurchase agreements may continue investment in repurchase agreements pursuant to those ordinances.

I. 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 that are issued by the United States government or by its departments or agencies and 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.

J. The state treasurer, with the advice and consent of the state board of finance, 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.

K. The state treasurer, with the advice and consent of the state board of finance, 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.

L. The collateral required for either of the forms of investment in Subsection J or K of this section shall be delivered to the fiscal agent of New Mexico 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.

M. Neither of the contracts in Subsection J or K 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).

N. 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) an asset-backed obligation with a maturity not exceeding five years that is rated AAA or its equivalent by a nationally recognized rating service.

O. 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 pursuant to the federal Investment Company Act of 1940 that invests in United States fixed income securities or debt instruments authorized pursuant to Subsections I, J and N of this section, provided that the investment company has total assets under management of at least one billion dollars (\$1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the investment company; 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 I, J and N of this section, provided that the investment manager has assets under management of at least one billion dollars (\$1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the individual, common or collective trust fund.

P. 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 118, AS AMENDED

CHAPTER 272

CHAPTER 272, LAWS 2003

AN ACT

RELATING TO TAXATION; REORGANIZING DEFINITION SECTIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-1-55 NMSA 1978 (being Laws 1975, Chapter 251, Section 3, as amended) is amended to read:

"7-1-55. CONTRACTOR'S BOND FOR GROSS RECEIPTS--TAX--PENALTY.--

A. A person engaged in the construction business who does not have a principal place of business in New Mexico and who enters into a prime construction contract to be performed in this state shall, at the time such contract is entered into, furnish the secretary or the secretary's delegate with a surety bond, or other acceptable security, in a sum equivalent to the gross receipts to be paid under the contract multiplied by the sum of the applicable rate of the gross receipts tax imposed by Section 7-9-4 NMSA 1978 plus the applicable rate or rates of tax imposed pursuant to local option gross receipts taxes to secure payment of the tax imposed on the gross receipts from the contract and shall obtain a certificate from the secretary or the secretary's delegate that the requirements of this subsection have been met.

B. If the total sum to be paid under the contract is changed by ten percent or more subsequent to the date the surety bond or other acceptable security is furnished to the secretary or the secretary's delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change.

C. If a person fails to comply with Subsection A or B of this section, the secretary or the secretary's delegate:

(1) may demand of the person by certified mail or in person that the person comply. Upon the failure of the person to comply within ten days of the date of the mailing of such demand, the secretary may institute a proceeding to enjoin the person from doing business as provided in Section 7-1-53 NMSA 1978; or

(2) may, when a serious and immediate risk exists that an amount of tax due or reasonably expected to become due from the person on gross receipts from a prime construction contract will not be paid, request the person to comply with Subsections A and B of this section, and, upon failure immediately to comply, the secretary may, without further notice of any kind, apply to any district court of the state for an injunction as provided in Section 7-1-53 NMSA 1978.

D. Subsections A, B and C of this section shall not apply if the total gross receipts to be paid under the construction contract, including any change in such amount, are less than fifty thousand dollars (\$50,000).

E. As used in this section, "construction" shall have the meaning set forth in Section 7-9-3.4 NMSA 1978 and "engaging in business" shall have the meaning set forth in Section 7-9-3.3 NMSA 1978.

F. A municipality or other political subdivision of the state or any agency of the state shall not issue a building or other construction permit to any person subject to the requirements of Subsection A of this section without first having been furnished by the construction contractor with the certificate from the secretary or the secretary's delegate specified in Subsection A of this section. Any person who issues any such permit before receiving the certificate shall be deemed guilty of a misdemeanor and, upon conviction, be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) for each offense."

Section 2. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended by Laws 2002, Chapter 28, Section 1 and by Laws 2002, Chapter 45, Section 1 and also by Laws 2002, Chapter 49, Section 1) is amended to read:

"7-9-3. DEFINITIONS.--As used in the Gross Receipts and Compensating Tax Act:

A. "buying" or "selling" means a transfer of property for consideration or the performance of service for consideration;

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

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

D. "initial use" or "initially used" means the first employment for the intended purpose and does not include the following activities:

(1) observation of tests conducted by the performer of services;

(2) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(3) review of preliminary drafts, drawings and other materials prepared by the performer of the services;

(4) inspection of preliminary prototypes developed by the performer of services; or

(5) similar activities;

E. "leasing" means an arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except that the granting of a license to use property is the sale of a license and not a lease;

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

G. "manufactured home" means a movable or portable housing structure for human occupancy that exceeds either a width of eight feet or a length of forty feet constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation;

H. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction;

I. "person" means:

(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) a national, federal, state, Indian or other governmental unit or subdivision, or an agency, department or instrumentality of any of the foregoing;

J. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

K. "research and development services" means an activity engaged in for other persons for consideration, for one or more of the following purposes:

(1) advancing basic knowledge in a recognized field of natural science;

(2) advancing technology in a field of technical endeavor;

(3) developing a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

(4) developing new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the rationale for purchase, lease or other transfer of the product, process or system;

(5) developing analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) designing and developing prototypes or integrating systems incorporating the advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

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

M. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property; and

N. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state."

Section 3. A new section of the Gross Receipts and Compensating Tax Act, Section 7-9-3.1 NMSA 1978, is enacted to read:

"7-9-3.1. DEFINITION--GROSS RECEIPTS.--

A. As used in the Gross Receipts and Compensating Tax Act:

(1) "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico, from selling services performed outside New

Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged;

(2) "gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or lease, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization;

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services;

(e) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with the New Mexico florist that are filled and delivered outside New Mexico by an out-of-state florist; and

(f) the receipts of a home service provider from providing mobile telecommunications services to customers whose place of primary use is in New Mexico if: 1) the mobile telecommunications services originate and terminate in the same state, regardless of where the services originate, terminate or pass through; and 2) the charges for mobile telecommunications services are billed by or for a customer's home service provider and are deemed provided by the home service provider. For the purposes of this section, "home service provider", "mobile telecommunications services", "customer" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act; and

(3) "gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price differential;

(f) amounts received solely on behalf of another in a disclosed agency capacity; and

(g) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with an out-of-state florist for filling and delivery in New Mexico by a New Mexico florist.

B. When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential."

Section 4. Section 7-9-3.3 NMSA 1978 (being Laws 2002, Chapter 18, Section 1) is repealed and a new Section 7-9-3.3 NMSA 1978 is enacted to read:

"7-9-3.3. DEFINITION--ENGAGING IN BUSINESS.--As used in the Gross Receipts and Compensating Tax Act, "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit, except that:

A. "engaging in business" does not include having a worldwide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person; and

B. "engaging in business" does not include using a nonaffiliated third-party call center to accept and process telephone or electronic orders of tangible personal property or licenses primarily from non-New Mexico buyers, which orders are forwarded to a location outside New Mexico for filling, or to provide services primarily to non-New Mexico customers."

Section 5. A new section of the Gross Receipts and Compensating Tax Act, Section 7-9-3.4 NMSA 1978, is enacted to read:

"7-9-3.4. DEFINITIONS--CONSTRUCTION AND CONSTRUCTION MATERIALS.--As used in the Gross Receipts and Compensating Tax Act:

A. "construction" means:

(1) the building, altering, repairing or demolishing in the ordinary course of business any:

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

(b) building, stadium or other structure;

(c) airport, subway or similar facility;

(d) park, trail, athletic field, golf course or similar facility;

(e) dam, reservoir, canal, ditch or similar facility;

(f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio, television or other tower;

(j) water, oil or other storage tank;

(k) shaft, tunnel or other mining appurtenance;

(l) microwave station or similar facility;

(m) retaining wall, wall, fence, gate or similar structure; or

(n) similar work;

(2) the leveling or clearing of land;

(3) the excavating of earth;

(4) the drilling of wells of any type, including seismograph shot holes or core drilling; or

(5) similar work; and

B. "construction material" means tangible personal property that becomes or is intended to become an ingredient or component part of a construction project, but "construction material" does not include a replacement fixture when the replacement is not construction or a replacement part for a fixture."

Section 6. Section 7-9-54 NMSA 1978 (being Laws 1969, Chapter 144, Section 44, as amended) is amended to read:

"7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

A. Receipts from selling tangible personal property to the United States or New Mexico or a governmental unit, subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts. Unless contrary to federal law, the deduction provided by this subsection does not apply to:

(1) receipts from selling metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling construction material; or

(4) that portion of the receipts from performing a "service", as defined in Subsection M of Section 7-9-3 NMSA 1978, that reflects the value of tangible personal property utilized or produced in performance of such service.

B. Receipts from selling tangible personal property for any purpose to an Indian tribe, nation or pueblo or a governmental unit, subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. When a seller, in good faith, deducts receipts for tangible personal property sold to the state or a governmental unit, subdivision, agency, department or instrumentality thereof, after receiving written assurances from the buyer's representative that the property sold is not construction material, the department is precluded from asserting in a later assessment or audit that the receipts are not deductible pursuant to Paragraph (3) of Subsection A of this section."

Section 7. Section 7-9-73.2 NMSA 1978 (being Laws 1998, Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4) is amended to read:

"7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--PRESCRIPTION DRUGS.--

A. Receipts from the sale of prescription drugs may be deducted from gross receipts and governmental gross receipts.

B. For the purposes of this section, "prescription drugs" means insulin and substances that are:

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

(2) prescribed for a specified person by a person authorized under state law to prescribe the substance; and

(3) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353."

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 126

CHAPTER 273

CHAPTER 273, LAWS 2003

AN ACT

RELATING TO PUBLIC MONEY; PRESCRIBING POWERS AND DUTIES OF THE FINANCIAL CONTROL DIVISION; REQUIRING STATE AGENCIES TO DETERMINE AUTHORITY FOR EXPENDITURES; PROVIDING FOR A PROCUREMENT CARD PROJECT; REQUIRING QUARTERLY REPORTS FROM LOCAL PUBLIC BODIES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION; PROVIDING CONDITIONS UNDER WHICH PRIOR YEAR OBLIGATIONS CAN BE PAID OUT OF CURRENT YEAR BUDGETS; PROVIDING FOR AUDITS OF CERTAIN ENTITIES AND INSTRUMENTALITIES OF THE STATE; PROVIDING ADDITIONAL PROCEDURES FOR ANNUAL FINANCIAL AND COMPLIANCE AUDITS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 6-5-1 NMSA 1978 (being Laws 1957, Chapter 252, Section 1) is amended to read:

"6-5-1. DEFINITIONS.--As used in Chapter 6, Article 5 NMSA 1978:

A. "division" means the financial control division of the department of finance and administration;

B. "central accounting system" means the accounting system used by the division to process and record payments, deposits and other financial transactions for state agencies and departments;

C. "electronic" means electric, digital, magnetic, optical, electronic or similar media;

D. "local public body" means any political subdivision of the state that expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; incorporated cities, towns or villages; drainage, conservancy, irrigation or other districts; charitable institutions for which appropriations are made by the legislature; and every office or officer of any of the above;

E. "model accounting practices" means the accounting methods and procedures used by the state;

F. "processing document" means a form, including supporting documents, submitted by a state agency to the division that will be used by the division to record a financial transaction or make payment;

G. "state agency" means any department, institution, board, bureau, commission, district or committee of the government of the state and means every office or officer of any of the above; and

H. "statewide accounting system network" means the central accounting system, the central payroll system, the central treasury system and all other financial accounting systems operated by state agencies as one system through manual or automated interfaces."

Section 2. Section 6-5-2 NMSA 1978 (being Laws 1957, Chapter 252, Section 2, as amended) is amended to read:

"6-5-2. FINANCIAL CONTROL DIVISION--CENTRAL SYSTEM OF STATE ACCOUNTS--ACCOUNTING SYSTEMS--PROCESSING DOCUMENTS--MODEL ACCOUNTING PRACTICES--INTERNAL ACCOUNTING CONTROLS.--

A. The division shall maintain a central system of state accounts and shall devise, formulate, approve, control and set standards for the accounting methods and procedures of all state agencies. The division shall prescribe procedures, policies and processing documents for use by state agencies in connection with fiscal matters and may require reports from state agencies as may be necessary to carry out its duties and functions. Procedures and policies issued by the division are exempt from the uniform standards of style and format promulgated by the state commission of public records.

B. The division shall issue a manual of model accounting practices containing the procedures and policies prescribed pursuant to Subsection A of this section and shall annually review and, if necessary, revise and reissue the manual. State agencies shall comply with the model accounting practices established by the division, and the administrative head of each state agency shall ensure that the model accounting practices are followed.

C. State agencies shall implement internal accounting controls designed to prevent accounting errors and violations of state and federal law and rules related to financial matters. In addition, state agencies shall implement controls to prevent the submission of processing documents to the division that contain errors or that are for a purpose not authorized by law."

Section 3. Section 6-5-3 NMSA 1978 (being Laws 1957, Chapter 252, Section 3, as amended) is amended to read:

"6-5-3. LEGALITY AND AUTHORITY FOR PROPOSED EXPENDITURES DETERMINED BY DIVISION AND STATE AGENCY--ENCUMBERING FUNDS.-- Before any vouchers or purchase orders are issued or contracts are entered into involving the expenditure of public funds by a state agency, the authority for the proposed expenditure shall be determined by the division and the state agency. After the authority for the expenditure is determined, the appropriate fund shall be shown by the division to be encumbered to the extent of the proposed expenditure. The division may request, and the state agency shall provide, such documentation and other information as the division deems necessary to justify the state agency's determination of authority. The division may disapprove the proposed expenditure if it determines that the justification is inadequate or is not substantiated by law. The division may perform, on a statistical or stratified basis, internal pre-audit and post-audit procedures to monitor and enforce compliance with the provisions of this section."

Section 4. Section 6-5-6 NMSA 1978 (being Laws 1957, Chapter 252, Section 7, as amended) is amended to read:

"6-5-6. DETERMINATIONS TO BE MADE PRIOR TO ISSUANCE OF WARRANTS.--

A. No warrant upon the state treasury for the disbursement of funds shall be issued except upon the determination of the division and the state agency that the amount of the expenditure:

(1) does not exceed the appropriation made to the state agency;
and

(2) does not exceed the periodic allotment made to the state agency or the unencumbered balance of funds at its disposal unless the warrant includes federal funds that will be receipted based upon established warrant-clearing patterns.

B. The division may implement and perform internal pre-audit and post-audit procedures to monitor and enforce compliance with the provisions of this section. The pre-audit and post-audit procedures may be applied on a stratified or statistical basis.

C. A state agency shall determine that a proposed expenditure is for a public benefit and purpose consistent with the related appropriation and is necessary to carry out the statutory mission of the state agency prior to committing the state to the transaction."

Section 5. Section 6-5-8 NMSA 1978 (being Laws 1963, Chapter 47, Section 1, as amended) is amended to read:

"6-5-8. VOUCHERS.--All claims for payment of public money shall be made upon a public voucher. All public vouchers shall be in the form and contain the information required by the division. All purchase vouchers for goods and services, other than personnel, shall be accompanied by supporting invoices and documentation required by the division. Vouchers for the reimbursement of public officers and employees shall have receipts attached for all money claimed, except that travel advance or reimbursement vouchers for claims of mileage and per diem at standard rates need not be accompanied by receipts. All vouchers shall be certified as true and correct by the officer or employee designated to approve payments of claims against state agencies and local public bodies, including public schools. The division may require that payroll, travel advance, reimbursement, refund or other vouchers be sworn to by the certifying officer or payee. Certification may be in writing or by electronic media."

Section 6. Section 6-5-9 NMSA 1978 (being Laws 1957, Chapter 252, Section 15, as amended) is amended to read:

"6-5-9. SECRETARY MAY AUTHORIZE STATE AGENCIES TO ISSUE WARRANTS--SECRETARY MAY EXCEPT STATE AGENCIES FROM SUBMISSION OF PROPOSED VOUCHERS, PURCHASE ORDERS OR CONTRACTS.--The secretary of finance and administration may, when he determines that efficiency or economy so requires, authorize state agencies to issue warrants and except state agencies from the requirement of prior submission of proposed vouchers, purchase orders or contracts to the financial control division as provided in Section 6-5-3 NMSA 1978. The authorization or exception shall be made annually by the order of the secretary in writing. The order shall state the extent of the authorization or exception and the reasons therefore. The department of finance and administration shall promulgate rules providing conditions for agencies to meet before obtaining an authorization or exception pursuant to this section. The department shall annually report to the legislative finance committee on the authorizations and exceptions granted."

Section 7. Section 6-5-10 NMSA 1978 (being Laws 1994, Chapter 11, Section 1, as amended) is amended to read:

"6-5-10. STATE AGENCY REVERSIONS--DIRECTOR POWERS--COMPLIANCE WITH FEDERAL RULES.--

A. Except as provided in Subsections B and C of this section, all unreserved undesignated fund balances in reverting funds and accounts as reflected in the central financial reporting and accounting system as of June 30 shall revert by September 30 to the general fund. The division may adjust the reversion within forty-five days of release of the audit report for that fiscal year.

B. The director of the division may modify a reversion required pursuant to Subsection A of this section if the reversion would violate federal law or rules pertaining to supplanting of state funds with federal funds or other applicable federal provisions."

Section 8. A new section of Chapter 6, Article 5 NMSA 1978 is enacted to read:

"ANNUAL FINANCIAL REPORT.--The division shall compile a comprehensive annual financial report. To assist in the compilation of the report, each state agency shall compile, in accordance with generally accepted accounting principles, its financial statements on a schedule established by the division."

Section 9. A new section of Chapter 6, Article 5 NMSA 1978 is enacted to read:

"DIVISION--ADDITIONAL DUTIES.--The division shall:

A. coordinate all procedures for financial administration and financial control and integrate them into an adequate and unified system, including the devising,

prescribing and installing of processing documents, records and procedures for state agencies;

B. collect and maintain the necessary information to produce ledgers, journals, registers and other supporting records and analyses;

C. maintain information that adequately supports all entries in the state general ledger;

D. verify and control state agency compliance with allotments;

E. conduct all central accounting and fiscal reporting for the state as a whole and produce interim statewide financial reports and the state's comprehensive annual financial statements;

F. prescribe, develop, operate and maintain a uniform statewide accounting system network;

G. prescribe and approve the installation of any changes in the statewide accounting system network as necessary to secure and maintain internal control and facilitate the recording of accounting data in order to prepare reliable and meaningful statements and reports;

H. prescribe the uniform classification of accounts to be used by state agencies;

I. operate a central payroll system;

J. perform monthly reconciliations with the balances and accounts kept by the state treasurer and adopt and promulgate rules regarding reconciliation for state agencies;

K. prescribe and revise procedures, techniques and formats for electronic data transmission to improve the flow of data among state agencies;

L. monitor reversion of unexpended general fund balances by September 30 of each year;

M. promulgate rules relating to the acceptance of credit, charge and debit cards for the payment of fees, taxes and other charges assessed by state agencies;

N. store and maintain records electronically;

O. establish, with the attorney general's approval, a procedure for electronic signatures;

P. maintain accounts and information as necessary to show the sources of state revenues and the purposes for which expenditures are made and provide proper accounting controls to protect state finances;

Q. make improvements in the state's model accounting practices, systems and procedures;

R. assist state agencies in resolving financial questions or problems;

S. have access to and authority to examine books, accounts, reports, vouchers, correspondence files and other records, bank accounts, money and other property of a state agency; and

T. consult with the state auditor to promote better financial statement reporting."

Section 10. A new section of Chapter 6, Article 5 NMSA 1978 is enacted to read:

"PROCUREMENT CARD PROJECT.--The division shall design and implement a procurement card project that allows state agencies to pay for purchases by using procurement cards. To implement the project, the division may enter into an agreement with a procurement card issuer. The division shall determine the limits of the project, including the number of state agencies that participate and limitations on types of goods and services that may be eligible for purchase through procurement cards."

Section 11. Section 6-6-2 NMSA 1978 (being Laws 1957, Chapter 250, Section 2, as amended) is amended to read:

"6-6-2. LOCAL GOVERNMENT DIVISION--POWERS AND DUTIES.--The local government division of the department of finance and administration has the power and duty in relation to local public bodies to:

A. require each local public body to furnish and file with the division, on or before June 1 of each year, a proposed budget for the next fiscal year;

B. examine each proposed budget and, on or before July 1 of each year, approve and certify to each local public body an operating budget for use pending approval of a final budget;

C. hold public hearings on proposed budgets;

D. make corrections, revisions and amendments to the proposed budgets as may be necessary to meet the requirements of law;

E. certify a final budget for each local public body to the appropriate governing body prior to the first Monday in September of each year. The budgets, when approved, are binding upon all tax officials of the state;

F. require periodic financial reports, at least quarterly, of local public bodies. The reports shall contain the pertinent details regarding applications for federal money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received;

G. upon the approval of the secretary of finance and administration, authorize the transfer of funds from one budget item to another when the transfer is requested and a need exists meriting the transfer and the transfer is not prohibited by law. In case of a need necessitating the expenditure for an item not provided for in the budget, upon approval of the secretary of finance and administration, the budget may be revised to authorize the expenditures;

H. with written approval of the secretary of finance and administration, increase the total budget of any local public body in the event the local public body undertakes an activity, service, project or construction program that was not contemplated at the time the final budget was adopted and approved and which activity, service, project or construction program will produce sufficient revenue to cover the increase in the budget or the local public body has surplus funds on hand not necessary to meet the expenditures provided for in the budget with which to cover the increase in the budget; provided, however, that the attorney general shall review legal questions identified by the secretary arising in connection with such budget increase requests;

I. supervise the disbursement of funds to the end that expenditures will not be made in excess of budgeted items or for items not budgeted and that there will not be illegal expenditures;

J. prescribe the form for all budgets, books, records and accounts for local public bodies; and

K. with the approval of the secretary of finance and administration, make rules relating to budgets, records, reports, handling and disbursement of public funds or in any manner relating to the financial affairs of the local public bodies."

Section 12. Section 6-10-1.1 NMSA 1978 (being Laws 1987, Chapter 79, Section 3) is amended to read:

"6-10-1.1. DEFINITIONS.--As used in Chapter 6, Article 10 NMSA 1978:

A. "deposit" includes share, share certificate and share draft;

B. "department" means the department of finance and administration; and

C. "secretary" means the secretary of finance and administration."

Section 13. Section 6-10-2 NMSA 1978 (being Laws 1923, Chapter 76, Section 1) is amended to read:

"6-10-2. PUBLIC MONEY--CASH BOOKS--DAILY BALANCE--PUBLIC RECORD.--It is the duty of every public official or agency of this state that receives or disburses public money to maintain a cash record in which is entered daily, in detail, all items of receipts and disbursements of public money. The cash record shall be balanced daily so as to show the balance of public money on hand at the close of each day's business. Except as may be otherwise provided by law, the cash record is a public record and is open to public inspection."

Section 14. Section 6-10-4 NMSA 1978 (being Laws 1963, Chapter 35, Section 1, as amended) is amended to read:

"6-10-4. PAYMENT OF OBLIGATIONS OF PRIOR YEARS FROM CURRENT YEAR APPROPRIATIONS.--

A. Except as provided in Subsection B of this section, appropriations made for a specific fiscal year may not be used for paying obligations of any prior fiscal year except upon approval of the department. As a condition to the approval, the department shall certify that there existed in the affected state agency's budget at the end of the fiscal year sufficient funds, including uncollected earned revenue, to pay the obligation had the bill been presented prior to the end of that fiscal year. The department shall make quarterly reports to the legislative finance committee concerning all authorizations of payment.

B. Appropriations to the human services department for medicaid payments may be expended by that department for medicaid obligations for prior fiscal years."

Section 15. Section 6-10-46 NMSA 1978 (being Laws 1923, Chapter 76, Section 24, as amended) is amended to read:

"6-10-46. DISBURSEMENT OF STATE FUNDS--VOUCHERS AND WARRANTS.--All payments and disbursements of public funds of the state shall be made upon warrants drawn by the secretary upon the treasury of the state based upon itemized vouchers in a form approved by the secretary."

Section 16. Section 8-6-7 NMSA 1978 (being Laws 1987, Chapter 183, Section 1, as amended) is amended to read:

"8-6-7. WRONGFUL DRAWING OR PAYMENT OF WARRANT BY SECRETARY OR TREASURER--PENALTY.--

A. If the secretary of finance and administration draws any warrant on the state treasurer when he knows or, with the use of available accounting information, should reasonably know there is an insufficient unexpended and unencumbered balance available for the purpose for which the warrant is drawn, he is in violation of this section unless the warrant will be redeemed using receivables accrued for that fiscal year pursuant to policies of the department of finance and administration.

B. If the state treasurer pays any warrant when he knows or, with the use of available accounting information, should reasonably know there are insufficient funds available in the treasury for the purpose to pay the warrant, he is in violation of this section unless the warrant will be redeemed using receivables accrued for that fiscal year pursuant to policies of the department of finance and administration.

C. A violation of this section is punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both."

Section 17. Section 12-6-2 NMSA 1978 (being Laws 1969, Chapter 68, Section 2) is amended to read:

"12-6-2. DEFINITION.--As used in the Audit Act, "agency" means:

A. any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature;

B. any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; and school districts;

C. any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority, the New Mexico lottery authority; and

D. every office or officer of any entity listed in Subsections A through C of this section."

Section 18. Section 12-6-3 NMSA 1978 (being Laws 1969, Chapter 68, Section 3) is amended to read:

"12-6-3. ANNUAL AND SPECIAL AUDITS.--

A. The financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him. The comprehensive annual financial report for the state shall be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him. The audits shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.

B. In addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part.

C. Annual financial and compliance audits of agencies under the oversight of the financial control division of the department of finance and administration shall be completed and submitted by an agency and independent auditor to the state auditor no later than sixty days after the state auditor receives notification from the financial control division to the effect that an agency's books and records are ready and available for audit."

Section 19. Section 12-6-6 NMSA 1978 (being Laws 1969, Chapter 68, Section 6) is amended to read:

"12-6-6. CRIMINAL VIOLATIONS.--Immediately upon discovery of any violation of a criminal statute in connection with financial affairs, the state auditor shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation. An agency or independent auditor shall report a violation immediately to the state auditor."

Section 20. Section 12-6-14 NMSA 1978 (being Laws 1969, Chapter 68, Section 14) is amended to read:

"12-6-14. CONTRACT AUDITS.--

A. The state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however, that an agency subject to oversight by the state department of public education or the commission on higher education shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice. The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. Payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section.

B. The state auditor or personnel of his office designated by him shall examine all reports of audits of agencies made pursuant to contract. Based upon demonstration of work in progress, the state auditor may authorize progress payments to the independent auditor by the agency being audited under contract. Final payment for services rendered by an independent auditor shall not be made until a determination and written finding that the audit has been made in a competent manner in accordance with the provisions of the contract and applicable rules by the state auditor."

Section 21. Section 21-1-33 NMSA 1978 (being Laws 1974, Chapter 30, Section 2) is amended to read:

"21-1-33. SYSTEM OF ACCOUNTING AND REPORTING--MANUAL.--

A. The commission on higher education, in consultation with the state auditor, shall compile a manual prescribing a uniform classification of accounts and a uniform system for budgeting and reporting that includes the reporting of all funds available. The manual shall apply to all institutions enumerated in Article 12, Section 11 of the constitution of New Mexico and all their branches, except the New Mexico school for the visually handicapped and the New Mexico school for the deaf. The manual shall also apply to the New Mexico junior college.

B. The uniform system for budgeting and reporting shall require the submission of at least quarterly financial reports.

C. Following approval by the legislative finance committee, the manual shall be reproduced by the commission on higher education and filed as required by the State Rules Act. Upon the filing, the requirements set forth in the manual shall constitute rules of the commission and have the force of law. The commission shall review the manual annually. Sections of the manual may be revised or amended from time to time by the commission, and revisions or amendments shall become effective upon approval by the legislative finance committee, reproduction and filing as provided in this section.

D. All institutions to which this section and Section 21-1-32 NMSA 1978 apply shall comply with all of the requirements in the manual, submit reports to the commission on higher education as requested and furnish such additional information as the commission deems necessary."

Section 22. 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. enter into professional services and consulting contracts or agreements as necessary;

B. collect money and provide for the investment of the fund;

C. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;

D. promulgate necessary rules, regulations and procedures for implementation of the Public School Insurance Authority Act;

E. 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;

F. 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; and

G. purchase, renovate, equip and furnish a building for the board."

Section 23. Section 22-8-5 NMSA 1978 (being Laws 1967, Chapter 16, Section 59, as amended) is amended to read:

"22-8-5. RULES--PROCEDURES.--

A. The department, in consultation with the state auditor, shall establish rules and procedures for a uniform system of accounting and budgeting of funds for all public schools and school districts of the state. The rules, including revisions or amendments, shall become effective only upon approval by the state board and filing with the state records center and publication. A copy shall also be filed with the department of finance and administration.

B. All public schools and school districts shall comply with the rules and procedures prescribed and shall, upon request, submit additional reports concerning finances to the department. In addition, upon request, all public schools and school districts shall file reports with the department containing pertinent details regarding applications for federal money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received.

C. Upon request by the department of finance and administration, the legislative finance committee or the legislative education study committee, the

department shall timely furnish information and data obtained from public schools and school districts pursuant to Subsection B of this section."

Section 24. Section 77-2-10 NMSA 1978 (being Laws 1973, Chapter 84, Section 1, as amended) is amended to read:

"77-2-10. RECEIPTS--DEPOSIT OF FUNDS.--

A. The board shall designate banks where its money is to be deposited.

B. Notwithstanding the provisions of Section 6-10-3 NMSA 1978, the board may establish rules governing the receipt and deposit of fees collected by its inspectors requiring remittance to the board in not more than ten days."

Section 25. REPEAL.--Sections 6-5-4 and 16-6-8 NMSA 1978 (being Laws 1957, Chapter 252, Section 4 and Laws 1913, Chapter 46, Section 7, as amended) are repealed.

Section 26. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 219, AS AMENDED

CHAPTER 274

CHAPTER 274, LAWS 2003

AN ACT

RELATING TO OPTOMETRY; CHANGING DEFINITIONS; CHANGING CERTAIN LICENSING AND FEE PROVISIONS; ESTABLISHING REQUIREMENTS FOR CONTACT LENS PRESCRIPTIONS AND REPLACEMENT CONTACT LENS PRESCRIPTIONS; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE OPTOMETRY ACT.

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

Section 1. Section 61-2-2 NMSA 1978 (being Laws 1973, Chapter 353, Section 2, as amended) is amended to read:

"61-2-2. DEFINITIONS.--As used in the Optometry Act:

A. "practice of optometry":

(1) means:

(a) the employment of any subjective or objective means or methods, including but not limited to the use of lenses, prisms, autorefractors or other automated testing devices, and includes the prescription or administration of drugs for the purpose of diagnosing the visual defects or abnormal conditions of the human eye and its adnexa; and

(b) the employing, adapting or prescribing of preventive or corrective measures, including but not limited to lenses, prisms, contact or corneal lenses or other optical appliances, ocular exercises, vision therapy, vision training and vision rehabilitation services, and includes the prescription or administration of all drugs rational for the correction, relief or referral of visual defects or abnormal conditions of the human eye and its adnexa; and

(2) does not include the use of surgery or injections in the treatment of eye diseases;

B. "ophthalmic lens" means a lens that has a spherical, cylindrical or prismatic value, is ground pursuant to a prescription and is intended to be used as eyeglasses;

C. "contact lens" means a lens to be worn on the anterior segment of the human eye;

D. "prescription" means a written order by an optometrist or a physician for an individual patient for:

(1) ophthalmic lenses;

(2) contact lenses; or

(3) a topical ocular pharmaceutical agent or an oral pharmaceutical agent that is regulated pursuant to the New Mexico Drug, Device and Cosmetic Act;

E. "eyeglasses" means an exterior optical device using ophthalmic lenses for the correction or relief of disturbances in and anomalies of human vision; and

F. "board" means the board of optometry."

Section 2. Section 61-2-4 NMSA 1978 (being Laws 1973, Chapter 353, Section 3) is amended to read:

"61-2-4. LICENSE REQUIRED.--Unless licensed pursuant to the Optometry Act, or specifically exempted or excluded from the application of all or part of that act, a person shall not:

- A. practice optometry;
- B. represent himself or offer his services as being able to practice optometry; or
- C. duplicate or replace an ophthalmic lens."

Section 3. Section 61-2-11 NMSA 1978 (being Laws 1973, Chapter 353, Section 9, as amended) is amended to read:

"61-2-11. LICENSE FEES--LICENSURE UNDER PRIOR LAW.--

- A. The board shall set fees for the following by rule:
 - (1) application fee in an amount not to exceed five hundred dollars (\$500);
 - (2) examination fee in an amount not to exceed five hundred dollars (\$500);
 - (3) licensure fee in an amount not to exceed four hundred dollars (\$400); and
 - (4) issuance fee for pharmaceutical certification in an amount not to exceed one hundred dollars (\$100).

B. A person licensed as an optometrist under any prior laws of this state, whose license is valid on April 3, 1973, shall be held to be licensed under the provisions of the Optometry Act and shall be entitled to the annual renewal of his license as provided in that act.

C. Prior to engaging in the active practice of optometry in this state, a licensee shall furnish the board evidence that he holds a registration number with the taxation and revenue department and has completed, as a condition of licensure by endorsement, the continuing education requirements as set by the rules of the board."

Section 4. Section 61-2-12 NMSA 1978 (being Laws 1973, Chapter 353, Section 10, as amended) is amended to read:

"61-2-12. LICENSE--DISPLAY--RENEWAL--RETIREMENT--RESUMPTION OF PRACTICE.--

A. A person to whom a license as an optometrist has been issued shall display the license in a conspicuous place in the licensee's principal office or place of business.

B. A license shall be renewed annually on or before July 1. The licensee shall pay to the secretary-treasurer of the board the required fees. The board shall promulgate rules establishing additional requirements and procedures for renewal of a license. It shall also promulgate rules establishing a fee schedule for renewal of a license, but a specific fee shall not exceed five hundred dollars (\$500).

C. Failure to renew a license pursuant to this section terminates the optometrist's authority to practice optometry, and the former licensee shall fulfill all current requirements for licensing and therapeutic drug certification if application for licensing or certification is made after termination.

D. An optometrist who intends to retire from the practice of optometry shall notify the board in writing before the expiration of his license, and the secretary-treasurer of the board shall acknowledge the receipt of the notice and record it. If within a period of five years from the year of retirement the optometrist desires to resume practice, he shall notify the board in writing, and, upon giving proof of completing refresher courses prescribed by rules of the board and the payment of required fees, his license shall be restored to him in full effect.

E. Before engaging in the practice of optometry, a licensed optometrist shall notify the secretary-treasurer of the board in writing of the address at which he intends to begin practice and subsequently of any changes in his business address or location. Notices the board is required to give a licensee shall legally have been given when delivered to the latest address furnished by the licensee to the board."

Section 5. Section 61-2-14 NMSA 1978 (being Laws 1973, Chapter 353, Section 12, as amended) is amended to read:

"61-2-14. OFFENSES.--

A. A person who commits one of the following acts is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978:

(1) practicing or attempting to practice optometry without a valid current license issued by the board;

(2) using or attempting to use a topical ocular pharmaceutical agent or an oral pharmaceutical agent that is regulated pursuant to the provisions of the New Mexico Drug, Device and Cosmetic Act without having the certification for its use issued by the board, unless the administration of pharmaceutical agents is done under the

direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act; or

(3) permitting a person in one's employ, supervision or control to practice optometry or use pharmaceutical agents described in Paragraph (2) of this subsection unless that person is licensed and certified in accordance with the provisions of the Optometry Act or unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act.

B. A person who commits one of the following acts is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978:

(1) making a willfully false oath or affirmation where the oath or affirmation is required by the Optometry Act;

(2) selling or using any designation, diploma or certificate tending to imply that one is a practitioner of optometry, unless one holds a license as provided by the Optometry Act;

(3) refusing, after a request, to provide a patient a copy of his eyeglasses prescription, if the prescription is not over one year old;

(4) duplicating or replacing an ophthalmic lens without a current prescription not more than two years old or without a written authorization from the patient if the prescription is not available;

(5) except for licensed optometrists, using any trial lenses, trial frames, graduated test cards or other appliances or instruments for the purpose of examining the eyes or rendering assistance to anyone who desires to have an examination of the eyes, but it is not the intent of this paragraph to prevent any school nurse, schoolteacher or employee in public service from ascertaining the possible need of vision services, if the person, clinic or program does not attempt to diagnose or prescribe ophthalmic lenses for the eyes or recommend any particular practitioner or system of practice;

(6) advertising the fabricating, adapting, employing, providing, sale or duplication of eyeglasses or any part thereof, but this paragraph does not preclude the use of a business name, trade name or trademark not relating to price or the use of the address, telephone number, office hours and designation of the provider, in or at retail outlets, on business cards, eyeglass cleaners and cases or in news media or in public directories, mailings and announcements of location openings or the use of the words "doctors' prescriptions for eyeglasses filled" or "eyeglass repairs, replacements and adjustments"; or

(7) selling of prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not derived from being engaged in that endeavor."

Section 6. Section 61-2-15 NMSA 1978 (being Laws 1973, Chapter 353, Section 13) is amended to read:

"61-2-15. EXEMPTIONS.--

A. Except for the provisions of Section 61-2-16 NMSA 1978 and as provided in this subsection, the Optometry Act does not apply to a licensed physician or a person, clinic or program under his responsible supervision and control, provided that the person, clinic or program under the responsible supervision and control of the licensed physician shall not use either loose or fixed trial lenses for the sole purpose of determining the prescription for eyeglasses or contact lenses.

B. Except as provided in Sections 61-2-2, 61-2-14, 61-2-16 and 61-2-17 NMSA 1978, the Optometry Act does not apply to a person selling eyeglasses who does not represent himself as being qualified to detect or correct ocular anomalies and who does not traffic upon assumed skill in adapting ophthalmic lenses to the eyes."

Section 7. Section 61-2-16 NMSA 1978 (being Laws 1973, Chapter 353, Section 14, as amended) is amended to read:

"61-2-16. FREEDOM OF CHOICE.--

A. In expending public money for any purpose involving the care of vision, any state board, commission or department created or existing by statute, including public schools or other state or municipal agencies or any of their employees, who, in the performance of their duties, are responsible for such expenditures shall not, directly or indirectly, refer the name or address of any particular ocular practitioner or system of practice to any person eligible for a vision examination or the correction of any visual or muscular anomaly, except in emergency situations.

B. Every policy of insurance or medical or health service contract providing for payment or reimbursement for any eye care service shall be construed to include payment or reimbursement for professional services rendered by a licensed optometrist, and no insurance policy or medical or health service contract shall discriminate between ocular practitioners rendering similar services."

Section 8. A new section of the Optometry Act is enacted to read:

"PRESCRIPTION FOR TOPICAL OCULAR PHARMACEUTICAL AGENT, ORAL PHARMACEUTICAL AGENT OR OPHTHALMIC LENSES--REQUIRED ELEMENTS--AUTHORITY OF A PERSON WHO SELLS AND DISPENSES EYEGLASSES.--

A. A prescription written for a topical ocular pharmaceutical agent or for an oral pharmaceutical agent shall include an order given individually for the person for whom prescribed, either directly from the prescriber to a pharmacist 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 agent prescribed and directions for its use and the date of issue.

B. A prescription written for ophthalmic lenses shall include:

(1) the dioptric power of spheres, cylinders and prisms, the axes of cylinders, the position of the prism base and, if so desired by the prescriber, the light transmission properties and lens curve values;

(2) the designation of pupillary distance; and

(3) the name of the patient, the date of the prescription, the expiration date of the prescription and the name and address of the prescriber.

C. A person who sells and dispenses eyeglasses upon the written prescription of a physician, surgeon or optometrist may determine:

(1) the type, form, size and shape of ophthalmic lenses;

(2) the placement of optical centers for distance-seeing and near-work;

(3) the designation of type and placement of reading segments in multivision lenses;

(4) the type and quality of frame or mounting, the type of bridge and the distance between lenses and the type, length and angling of temples; and

(5) the designation of pupillary distance."

Section 9. A new section of the Optometry Act is enacted to read:

"CONTACT LENS PRESCRIPTION--REQUIRED ELEMENTS--
RESTRICTIONS.--

A. A contact lens prescription shall:

(1) explicitly state that it is for contact lenses;

(2) specify the lens type;

(3) include all specifications for the ordering and fabrication of the lenses;

(4) include the date of issue, the name and address of the patient and the name and address of the prescriber; and

(5) indicate a specific date of expiration, which shall be twenty-four months from the date of the prescription, unless, in the professional opinion of the prescriber, a longer or shorter expiration date is in the best interests of the patient.

B. A contact lens shall be fitted to a patient at the prescriber's place of practice.

C. A prescriber may extend a patient's prescription without completing another eye examination of the patient.

D. A prescriber shall not write a contact lens prescription until he has determined all the requirements of a satisfactory fit.

E. A contact lens prescription may include a statement of caution or a disclaimer, if the statement or disclaimer is supported by appropriate findings and documented patient records.

F. The words "OK for contact or corneal lenses", "fit with contact or corneal lenses", "contact or corneal lenses may be worn" or similar wording do not constitute a contact lens prescription.

G. If, in the professional opinion of the prescriber, a patient is not adhering to an appropriate regimen of care and follow-up with regard to the use of contact lenses, the prescriber may terminate his care of that patient. The prescriber shall notify the patient in writing that the prescriber is terminating care and shall state his reasons for doing so."

Section 10. A new section of the Optometry Act is enacted to read:

"REPLACEMENT CONTACT LENS PRESCRIPTIONS.--

A. As used in this section:

(1) "immediate follow-up care" is that period of contact lens fitting time required to determine a contact lens prescription that is appropriate to the documented clinical needs of the patient; and

(2) "replacement contact lens prescription" means a prescription prepared by a licensed optometrist containing the information specified in this section

and written expressly for the purpose of providing lenses that have already been properly fitted.

B. A licensed optometrist shall ensure that each replacement contact lens prescription that the licensed optometrist prescribes for contact lenses:

(1) contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including the:

(a) lens manufacturer;

(b) type of lens;

(c) power of the lens;

(d) base curve;

(e) lens size;

(f) name of the patient;

(g) date the prescription was given to the patient;

(h) name and office location of the licensed optometrist who writes the replacement contact lens prescription; and

(i) expiration date of the replacement contact lens prescription; and

(2) is reduced to writing and placed in the patient's permanent file.

C. After a licensed optometrist releases the patient from immediate follow-up care, the patient may request a replacement contact lens prescription from the licensed optometrist. The request shall be in writing and signed by the patient, and shall be retained in the patient's file for at least five years. If, after examination, the patient's prescription has not changed since the last examination and there are no ocular concerns, a licensed optometrist shall, upon request of the patient, provide the patient's replacement contact lens prescription to the patient without cost to the patient and without requiring the patient to purchase contact lenses.

D. In responding to a patient's request pursuant to Subsection C of this section, a licensed optometrist shall transmit the replacement contact lens prescription by mail, telephone, facsimile, e-mail or any other means of communication that will, under normal circumstances, result in the patient receiving the information within a reasonable time.

E. The replacement contact lens prescription that a licensed optometrist provides a patient:

(1) shall contain the information necessary for the proper duplication of the current prescription of the patient;

(2) shall contain, subject to the provisions of Subsection F of this section, an expiration date for the replacement contact lens prescription of not more than twenty-four months from the time the patient was first examined; and

(3) may contain wearing guidelines or specific instructions for use of the contact lenses by the patient, or both.

F. The licensed optometrist shall enter into the patient's medical record the valid clinical reasons for a shorter expiration date and shall provide the patient with a written and oral explanation of the clinical reasons for a shorter expiration date.

G. When a patient's prescription is dispensed by a person other than a licensed optometrist or a person associated directly or indirectly with the licensed optometrist, the licensed optometrist is not liable for any injury to or condition of a patient caused solely by the negligence of the dispenser.

H. A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

I. A licensed optometrist who fills or provides a contact lens prescription shall maintain a record of that prescription in accordance with rules promulgated by the board.

J. A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for five years.

K. The board may impose a civil fine of no more than one thousand dollars (\$1,000) on a licensed optometrist who fails to provide a replacement contact lens prescription, knowingly dispenses contact lenses without a valid and unexpired replacement contact lens prescription or who otherwise fails to comply with the provisions of this section.

L. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless the person has at the time of sale or dispensing a copy of a valid, unexpired prescription or has obtained verification of a valid, unexpired prescription in accordance with Subsection M of this section.

M. A contact lens may not be sold, dispensed or distributed to a patient in this state by a seller of contact lenses unless one of the following has occurred:

(1) the patient has given or mailed the seller an original, valid, unexpired written contact lens prescription;

(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile transmission a copy of a valid, unexpired written contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or

(3) the prescribing licensed optometrist has orally or in writing verified the valid, unexpired prescription to a seller designated by the patient to act on his behalf.

N. A verification shall not be provided pursuant to Paragraph (3) of Subsection M of this section unless the patient has designated the contact lens seller to act on the patient's behalf. Verification by the prescribing licensed optometrist shall take place pursuant to the following procedure:

(1) a request for a verification shall be made by the seller to the prescribing licensed optometrist by facsimile, mail or telephone;

(2) if received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three working days of receipt;

(3) if not received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three working days after 9:00 a.m. of the next working day following receipt;

(4) in any case where the existence of a valid designation by the patient of a seller to act on the patient's behalf is in question, the prescriber shall promptly contact the patient to determine if a designation is in effect. Under no circumstances shall a non-response to a verification request be deemed to authorize, validate or confirm any prescription; and

(5) as used in this subsection, "working day" means any Saturday or Sunday that the office of the prescribing licensed optometrist is open and Monday through Friday but does not include a holiday.

O. A person who knowingly violates the provisions of Subsection L of this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

P. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he is registered with the board of pharmacy as a seller or dispenser of contact lenses; provided that pharmacies, clinics and hospitals licensed by the board of pharmacy shall be exempt from this requirement. The board of pharmacy shall promulgate rules to establish the application procedures for obtaining registration and may include a requirement for payment of a fee by the applicant, but the amount of the fee shall not exceed the costs of implementing the registration requirement. The board of pharmacy shall maintain a current list of all registered sellers and dispensers of contact lenses. A person who is not registered pursuant to this subsection and knowingly sells or dispenses a contact lens to a resident of this state is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978."

HOUSE FLOOR SUBSTITUTE FOR

HOUSE BILL 248, AS AMENDED

CHAPTER 275

CHAPTER 275, LAWS 2003

AN ACT

RELATING TO TAXATION; AMENDING AND REPEALING SECTIONS OF THE INCOME TAX ACT.

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

Section 1. Section 7-2-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 26, as amended) is amended to read:

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

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning

on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year;

(3) includes, for all taxpayers, any other income of the taxpayer not included in adjusted gross income but upon which a federal tax is calculated pursuant to the Internal Revenue Code for income tax purposes, except amounts for which a calculation of tax is made pursuant to Section 55 of the Internal Revenue Code, as that section may be amended or renumbered; "base income" also includes interest received on a state or local bond; and

(4) includes, for all taxpayers, an amount deducted pursuant to Section 7-2-32 NMSA 1978 in a prior taxable year if:

(a) such amount is transferred to another qualified tuition program, as defined in Section 529 of the Internal Revenue Code, not authorized in the Education Trust Act; or

(b) a distribution or refund is made for any reason other than:
1) to pay for qualified higher education expenses, as defined pursuant to Section 529 of the Internal Revenue Code; or 2) upon the beneficiary's death, disability or receipt of a scholarship;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

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. "fiduciary" means a guardian, trustee, executor, administrator, committee, conservator, receiver, individual or corporation acting in any fiduciary capacity;

F. "filing status" means "married filing joint returns", "married filing separate returns", "head of household", "surviving spouse" and "single", as those terms are generally defined for federal tax purposes;

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

H. "head of household" means "head of household" as generally defined for federal income tax purposes;

I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;

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

K. "lump-sum amount" means for the purpose of determining liability for federal income tax, an amount that was not included in adjusted gross income but upon which the five-year-averaging or the ten-year-averaging method of tax computation provided in Section 402 of the Internal Revenue Code, as that section may be amended or renumbered, was applied;

L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source, including:

- (1) compensation;
- (2) net profit from business;
- (3) gains from dealings in property;
- (4) interest;
- (5) net rents;
- (6) royalties;
- (7) dividends;
- (8) alimony and separate maintenance payments;
- (9) annuities;
- (10) income from life insurance and endowment contracts;
- (11) pensions;
- (12) discharge of indebtedness;
- (13) distributive share of partnership income;
- (14) income in respect of a decedent;

(15) income from an interest in an estate or a trust;

(16) social security benefits;

(17) unemployment compensation benefits;

(18) workers' compensation benefits;

(19) public assistance and welfare benefits;

(20) cost-of-living allowances; and

(21) gifts;

M. "modified gross income" excludes:

(1) payments for hospital, dental, medical or drug expenses to or on behalf of the taxpayer;

(2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of compensation;

(3) payments pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular use or invoice by the payer; or

(4) payments pursuant to Sections 7-2-14, 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

N. "net income" means, for estates and trusts, base income adjusted to exclude amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States and means, for taxpayers other than estates or trusts, base income adjusted to exclude:

(1) an amount equal to the standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered;

(2) an amount equal to the itemized deductions defined in Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, allowed the taxpayer for the taxpayer's taxable year less the amount excluded pursuant to Paragraph (1) of this subsection;

(3) an amount equal to the product of the exemption amount allowed for the taxpayer's taxable year by Section 151 of the Internal Revenue Code, as

that section may be amended or renumbered, multiplied by the number of personal exemptions allowed for federal income tax purposes;

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

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

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

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

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

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

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

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

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

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

P. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (6) or (7) of Subsection N of this section, may be excluded from base income;

Q. "nonresident" means every individual not a resident of this state;

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

S. "resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year, who, on or before the last day of the taxable year, changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act for periods after that change of abode;

T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

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

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

W. "surviving spouse" means "surviving spouse" as generally defined for federal income tax purposes;

X. "taxable income" means net income less any lump-sum amount;

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

Z. "taxpayer" means any individual subject to the tax imposed by the Income Tax Act."

Section 2. Section 7-2-12 NMSA 1978 (being Laws 1965, Chapter 202, Section 10, as amended) is amended to read:

"7-2-12. TAXPAYER RETURNS--PAYMENT OF TAX.--

A. Every resident of this state and every individual deriving income from any business transaction, property or employment within this state and not exempt from tax under the Income Tax Act who is required by the laws of the United States to file a federal income tax return shall file a complete tax return with the department in form and content as prescribed by the secretary. Except as provided in Subsection B of this section, the return required and the tax imposed on individuals under the Income Tax Act are due and payment is required on or before the fifteenth day of the fourth month following the end of the taxable year.

B. When the department approves electronic media for use by a taxpayer whose taxable year is a calendar year, the taxpayer who uses electronic media for both filing and payment must submit the required return and the tax imposed on individuals under the Income Tax Act on or before the thirtieth day of the fourth month following the end of the taxable year."

Section 3. Section 7-2-12.2 NMSA 1978 (being Laws 1996, Chapter 17, Section 1, as amended) 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 applicable credits and 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, the taxpayer must pay seventy-five percent of the required annual payment 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, the taxpayer must pay one hundred percent of the required annual payment 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 that 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 an underpayment of the required annual payment by a taxpayer, there shall be added to the tax a 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 a 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 on an underpayment of the fourth required installment for the taxable year.

J. This section applies 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. For a taxable year that ends 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.

M. The provisions of this section do not apply to first-year residents."

Section 4. Section 7-2-14.3 NMSA 1978 (being Laws 1994, Chapter 111, Section 1, as amended) 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 But Not		Property Tax Rebate
Over	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 taxable years 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 December 31 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 December 31 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 5. 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 multidwelling or a multipurpose 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
14,000	15,000	150
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
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
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 and shall specify the period of time for which the rebate provided by this section may be claimed by qualified taxpayers. 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 6. REPEAL.--Section 7-2-33 NMSA 1978 (being Laws 1997, Chapter 259, Section 9) is repealed.

Section 7. APPLICABILITY.--The provisions of this act apply to the 2003 and subsequent taxable years.

HOUSE BILL 282, AS AMENDED

CHAPTER 276

CHAPTER 276, LAWS 2003

AN ACT

RELATING TO HEALTH CARE; CLARIFYING CERTAIN DUTIES OF THE BOARD OF NURSING; PROVIDING FOR A NURSING EXCELLENCE PROGRAM; CREATING THE NURSING EXCELLENCE FUND; AMENDING AND ENACTING SECTIONS OF THE NURSING PRACTICE ACT; MAKING AN APPROPRIATION.

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

Section 1. Section 61-3-1 NMSA 1978 (being Laws 1968, Chapter 44, Section 1) is amended to read:

"61-3-1. SHORT TITLE.--Chapter 61, Article 3 NMSA 1978 may be cited as the "Nursing Practice Act"."

Section 2. A new section of the Nursing Practice Act is enacted to read:

"NURSING EXCELLENCE PROGRAM--LICENSE RENEWAL SURCHARGE.--

A. The board may establish a "nursing excellence program" that provides strategies to enhance recruitment and retention of professional nurses, increase career and educational opportunities and improve interaction with health facilities administrations, the medical profession and institutions of higher education.

B. The board may impose a license renewal surcharge for each nursing license renewed in an amount not to exceed twenty dollars (\$20.00) to implement and maintain the nursing excellence program. The license renewal surcharge shall be deposited in the nursing excellence fund."

Section 3. A new section of the Nursing Practice Act is enacted to read:

"NURSING EXCELLENCE FUND CREATED.--The "nursing excellence fund" is created in the state treasury to support the nursing excellence program. The fund consists of license renewal surcharges, appropriations, gifts, grants, donations and income from investment of the fund. Any income earned on investment of the fund shall remain in the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the board and money in the fund is appropriated to the board to carry out the purposes of the nursing excellence program. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the chairman of the board or his authorized representative."

Section 4. 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, if a majority of the board concurs in the 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, clinical nurse specialists and certified registered nurse anesthetists."

Section 5. Section 61-3-10.1 NMSA 1978 (being Laws 1993, Chapter 61, Section 2, as amended) 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; (5) withdraw approval from a training program for failure to maintain a current contract with the board or for failure to pay the administrative fee as provided in the contract; and

(6) 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 certification 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 by rule the following nonrefundable fees:

(1) initial certification of a hemodialysis technician by examination, not to exceed sixty dollars (\$60.00);

(2) renewal of certification of a hemodialysis technician, not to exceed sixty dollars (\$60.00);

(3) reactivation of a certificate of a hemodialysis technician after failure to renew a certificate, not to exceed thirty dollars (\$30.00);

(4) initial review and approval of a training program, not to exceed three hundred dollars (\$300);

(5) subsequent review and approval of a training program where the hemodialysis unit has changed the program, not to exceed one hundred dollars (\$100);

(6) 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 fifty dollars (\$50.00); and

(7) periodic evaluation of a training program, not to exceed one hundred fifty dollars (\$150).

G. Each training program shall, through contract or agreement, pay the board for administrative and other costs associated with oversight of the program."

Section 6. 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) withdraw approval from a medication aide training program or participant program for failure to maintain a current contract with the board or for failure to pay the administrative fee as provided in the contract;

(4) 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

(5) 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 three hundred dollars (\$300) for each initial review and approval or one hundred dollars (\$100) for each subsequent review and approval in case of change or modification in a training program;

(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 one hundred fifty dollars (\$150); 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 7. 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:

A. furnish evidence satisfactory to the board that the applicant has successfully completed an approved program of nursing for licensure as a licensed practical nurse or registered nurse and has graduated or is eligible for graduation; and

B. at the cost to the applicant, provide the board with fingerprints and other information necessary for a state and national criminal background check."

Section 8. Section 61-3-23 NMSA 1978 (being Laws 1977, Chapter 220, Section 14, as amended) is amended to read:

"61-3-23. PERMIT TO PRACTICE FOR GRADUATE NURSES.--

A. The board may issue a permit to practice to an applicant upon completion of an approved course of study and upon application to take the national licensing examination after graduation within the time frame set by rules of the board.

B. The permit to practice shall be issued for practice under direct supervision at a specified place of employment in the state.

C. The permit to practice shall be valid from issuance until the results of the national licensing examination are disseminated by the board office to the examinee, at which time the permit is void and the applicant who has passed the examination may be issued a license to practice."

Section 9. 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 renewal month except when on active military duty during a military action.

B. At least six weeks before the end of the renewal month, the board shall mail to the licensee an application blank, which shall be returned to the board before the end of the renewal 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. 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 10. Section 61-3-27 NMSA 1978 (being Laws 1968, Chapter 44, Section 23, as amended) is amended to read:

"61-3-27. FUND ESTABLISHED--DISPOSITION--METHOD OF PAYMENT.--

A. There is created a "board of nursing fund".

B. Except as provided in Sections 2 and 3 of this 2003 act, all funds received by the board and money collected under the Nursing Practice Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the board of nursing fund. Any income earned on investment of the fund shall remain in the fund.

C. Payments out of the board of nursing fund shall be on vouchers issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department.

D. All amounts paid into the board of nursing fund shall be subject to the order of the board and shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Nursing Practice Act, the duties imposed by that act and the promotion of nursing education and standards in this state. All money unused at the end of the fiscal year shall remain in the board of nursing fund for use in accordance with the provisions of the Nursing Practice Act to further the purposes of that act.

E. All funds that may have accumulated to the credit of the board under any previous act shall be continued for use by the board in administration of the Nursing Practice Act."

Section 11. 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 patient or who is a camp nurse who accompanies and cares for a patient temporarily residing in this state if 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."

HOUSE BILL 376

CHAPTER 277

CHAPTER 277, LAWS 2003

AN ACT

RELATING TO UTILITIES; DEFINING GENERATION AND TRANSMISSION COOPERATIVE; DECLARING AN EMERGENCY.

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

Section 1. Section 62-6-4 NMSA 1978 (being Laws 1941, Chapter 84, Section 17, as amended) is amended to read:

"62-6-4. SUPERVISION AND REGULATION OF UTILITIES.--

A. The commission shall have general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations and in respect to its securities, all in accordance with the provisions and subject to the reservations of the Public Utility Act, and to do all things necessary and convenient in the exercise of its power and jurisdiction. Nothing in this section, however, shall be deemed to confer upon the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipal corporation either directly or through a municipally owned corporation or owned and operated by any H class county, by a class B county as defined in Section 4-36-8 NMSA 1978 or by a class A county as described by Section 4-36-10 NMSA 1978 either directly or through a corporation owned by or under contract with an H class county, by a class B county as defined in Section 4-36-8 NMSA 1978 or by a class A county as described by Section 4-36-10 NMSA 1978 or the rates, service, securities or class I or class II transactions of a generation and transmission cooperative. No inspection or supervision fees shall be paid by generation and transmission cooperatives, or by such municipalities or municipally owned corporations, a class B county as defined in Section 4-36-8 NMSA 1978, a class A county as described by Section 4-36-10 NMSA 1978 or H class counties or such corporation owned by or under contract with a class B county as defined in Section 4-36-8 NMSA 1978, a class A county as described by Section 4-36-10 NMSA 1978 or an H class county with respect to operations conducted in a class B county as defined in Section 4-36-8 NMSA 1978, in a class A county as described by Section 4-36-10 NMSA 1978 or in H class counties.

B. The sale, furnishing or delivery of gas, water or electricity by any person to a utility for resale to or for the public shall be subject to regulation by the commission but only to the extent necessary to enable the commission to determine that the cost to the utility of the gas, water or electricity at the place where the major distribution to the public begins is reasonable and that the methods of delivery of the gas, water or electricity are adequate; provided, however, that nothing in this subsection shall be construed to permit regulation by the commission with respect to a generation and transmission cooperative, except location control pursuant to Section 62-9-3 NMSA 1978 and limited rate regulation to the extent provided in Subsection D of this section, or of production or sale price at the wellhead of gas or petroleum.

C. The sale, furnishing or delivery of coal, uranium or other fuels by any affiliated interest to a utility for the generation of electricity for the public shall be subject to regulation by the commission but only to the extent necessary to enable the commission to determine that the cost to the utility of the coal, uranium or other fuels at the point of sale is reasonable and that the methods of delivery of the electricity are

adequate; provided, however, that nothing in this subsection shall be construed to permit regulation by the commission of production or sale price at the wellhead of gas or petroleum. Nothing in this section shall be construed to permit regulation by the commission of production or sale price at the point of production of coal, uranium or other fuels.

D. New Mexico rates proposed by a generation and transmission cooperative shall be filed with the commission in the form of an advice notice, a copy of which shall be simultaneously served on all member utilities. Any member utility may file a protest of the proposed rates no later than twenty days after the generation and transmission cooperative files the advice notice. If three or more New Mexico member utilities file protests and the commission determines there is just cause in at least three of the protests for reviewing the proposed rates, the commission shall suspend the rates, conduct a hearing concerning reasonableness of the proposed rates and establish reasonable rates. Each protest must contain a clear and concise statement of the specific grounds upon which the protestant believes the proposed rates are unreasonable or otherwise unlawful; a brief description of the protestant's efforts to resolve its objections directly with the generation and transmission cooperative; a clear and concise statement of the relief the protestant seeks from the commission; and a formal resolution of the board of trustees of the protesting member utility authorizing the filing of the protest. In order to determine whether just cause may exist for review, the commission shall consider whether each protestant has exhausted remedies with the generation and transmission cooperative or whether the generation and transmission cooperative has unreasonably rejected the protestant's objections to the proposed rates. A member utility shall present its objections to the generation and transmission cooperative in writing and allow a reasonable period for the generation and transmission cooperative to attempt resolution of, or otherwise respond to, those objections. A period of seven days after receipt of written objections will be deemed reasonable for the generation and transmission cooperative to provide a written response to the member utility, but a written response is not required if such time period extends beyond twenty days after the date on which the generation and transmission cooperative filed the advice notice. The generation and transmission cooperative and its members are expected to make a good faith effort to resolve the member utility's objections to the proposed rates during that period of time.

E. As used in this section, "generation and transmission cooperative" means a person with generation or transmission facilities either organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act or organized in another state and providing sales of electric power to member cooperatives in this state."

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

HOUSE BILL 386

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 278

CHAPTER 278, LAWS 2003

AN ACT

RELATING TO MEDICAID; DIRECTING THE HUMAN SERVICES DEPARTMENT TO ESTABLISH A WAIVER PROGRAM TO PROVIDE PRESCRIPTION DRUGS FOR CERTAIN SENIORS AND DISABLED PERSONS.

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

Section 1. PRESCRIPTION DRUG WAIVER PROGRAM--PURPOSE--ELIGIBILITY.--Subject to the availability of state funds and consistent with the federal Social Security Act, the human services department shall create a medicaid waiver program and may by regulation provide prescription drugs to persons whose incomes are less than one hundred eighty-five percent of the federal poverty level and who:

A. are sixty-five years of age or older; or

B. have been determined to be disabled under the criteria established under the federal social security administration's disability determination rules as applied by the department.

HOUSE BILL 402, AS AMENDED

CHAPTER 279

CHAPTER 279, LAWS 2003

AN ACT

RELATING TO HEALTH; DIRECTING THE HUMAN SERVICES DEPARTMENT TO INITIATE THE STUDIES, ANALYSES AND PILOT PROJECTS RECOMMENDATIONS OF THE MEDICAID REFORM COMMITTEE; DECLARING AN EMERGENCY.

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

Section 1. STUDIES--ANALYSES--PILOT PROJECTS.--

A. The human services department shall, to the extent possible, carry out the studies, analyses and pilot projects recommended by the medicaid reform committee that was established pursuant to Laws 2002, Chapter 96 as follows:

(1) conduct a cost-benefit analysis of the carve out of the pharmacy drug benefit from the managed care system to a centralized administration of the benefit for the managed care system and the fee-for-service system;

(2) conduct:

(a) a comprehensive feasibility study and cost-benefit analysis of the replacement of the managed care system required pursuant to Section 27-2-12.6 NMSA 1978 with a statewide primary care case management model that assigns responsibility for care coordination to primary care providers and includes a medical and utilization review component designed to assist primary care providers in case management and that reimburses providers for these additional responsibilities and establish an ongoing evaluation of the primary care case management model's cost-effectiveness; or

(b) a pilot project for a primary care case management model for the fee-for-service population, or a selected subpopulation, that:

(1) assigns responsibility for care coordination to primary care providers;

(2) includes a medical and utilization review component designed to assist primary care providers in case management; and

(3) reimburses providers for these additional responsibilities and evaluates the effectiveness of the pilot project;

(3) conduct:

(a) a cost-benefit analysis and comparison of nonemergency transportation services under a state-managed model, brokerage models and other models; or

(b) conduct a pilot project in a rural area and in an urban area for nonemergency transportation services for selected medicaid recipients in the fee-for-service system;

(4) complete the analysis necessary for the global funding waiver currently in process in the department and review cost and effectiveness projections to determine whether the department should proceed with a request to the federal government for the waiver;

(5) conduct a cost-benefit analysis and comparison of the personal care option's consumer-directed and consumer-delegated care components and evaluate the respective components for:

(a) cost-effectiveness as an alternative to or intermediate step before institutional care;

(b) projected long-term costs as currently operated;

(c) need for oversight to ensure appropriate care for recipients and prevention of fraud or abuse;

(d) the appropriateness of the eligibility criteria; and

(e) anticipated savings, if any, with greater use of the consumer-directed or consumer-delegated model;

(6) identify options for revising, limiting, reducing or eliminating medicaid services, while ensuring that the most vulnerable medicaid recipients are not adversely affected, and determine the feasibility and advisability of a federal waiver to implement proposed medicaid service changes;

(7) conduct an external analysis of selected medicaid prescription drug use in New Mexico with respect to trends in prescribing, utilization and costs and potential cost-savings initiatives;

(8) determine the feasibility of a federal waiver to include in the medicaid program persons currently served solely with state general funds through the health care programs and services of other agencies, including the department of health, the children, youth and families department and the state agency on aging;

(9) work with counties to determine the feasibility of a federal waiver to:

(a) include in the medicaid program persons who would qualify under the provisions of the Indigent Hospital and County Health Care Act;

(b) ensure that counties, in conjunction with the department, retain sufficient flexibility and accountability for the use of the county indigent hospital claims fund; and

(c) ensure that county funds for indigents not covered under the waiver are not diminished through its implementation; and

(10) work toward a self-directed care option in the disabled and elderly and the developmentally disabled medicaid waiver programs, subject to appropriation and availability of federal and state funds.

B. The department shall, to the extent possible, combine or coordinate similar initiatives in this section or in other medicaid reform committee recommendations to avoid duplication or conflict.

C. The department shall, to the extent permissible, apply for public and private grants or claim federal matching funds.

D. If the funding is insufficient for all the initiatives in this section, the department shall prioritize the initiatives in conjunction with the appropriate legislative interim committee.

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

HOUSE BILL 412, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 280

CHAPTER 280, LAWS 2003

AN ACT

RELATING TO GUARDIANSHIP; CREATING THE OFFICE OF GUARDIANSHIP IN THE DEVELOPMENTAL DISABILITIES PLANNING COUNCIL; PROVIDING POWERS AND DUTIES; TRANSFERRING FUNCTIONS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES FROM THE OFFICE OF THE ATTORNEY GENERAL.

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

Section 1. SHORT TITLE.--This act may be cited as the "Office of Guardianship Act".

Section 2. OFFICE OF GUARDIANSHIP--CREATED--STAFF.--

A. The "office of guardianship" is created in the developmental disabilities planning council.

B. The director of the developmental disabilities planning council shall employ a head of the office who shall be hired on the basis of ability, experience and knowledge of guardianship issues under the Uniform Probate Code. The position shall be classified pursuant to the Personnel Act.

C. Subject to appropriations, the director may hire such other professional and clerical staff as necessary to carry out the purposes of the office.

Section 3. OFFICE--POWERS AND DUTIES.--

A. The office of guardianship may:

(1) promulgate rules in accordance with the State Rules Act to carry out the provisions of the Office of Guardianship Act; and

(2) enter into agreements with other state or federal agencies to provide guardianship services and to provide or receive payment for such services.

B. The office of guardianship shall:

(1) contract for the provision of probate guardianship services to income-eligible incapacitated persons, including temporary guardianship as provided in Section 45-5-310 NMSA 1978;

(2) provide for the recruitment and training of persons interested and willing to serve as mental health treatment guardians;

(3) provide training and information to interested persons on the duties and responsibilities of guardians, including alternatives to guardianship and mental health treatment guardianship;

(4) establish procedures for the investigation and resolution of complaints against contractors;

(5) contract for attorneys to petition the district court for guardianship of persons believed to be incapacitated or to seek amendment or termination of existing guardianship orders if the needs or situation of wards have changed; provided that the selection of persons to be served under such contracts shall be made by the office based on selection criteria established by rule; and

(6) serve as an interested person as defined in Subsection I of Section 45-5-101 NMSA 1978.

Section 4. CONTRACT MONITORING AND ENFORCEMENT.--

A. The office of guardianship shall monitor and enforce all guardianship contracts. In carrying out this duty, the office may:

(1) have access to case records, copies of court filings and reports, financial records and other records maintained by contractors related to contract services provided unless specifically sequestered by the court;

(2) petition the court of jurisdiction for access to records that have been sequestered;

(3) arrange visits with wards who are served by contract guardians;
and

(4) pursue legal and other remedies against contractors for noncompliance with contract provisions.

B. The office shall protect and maintain the confidentiality of all client-specific information and records obtained to the same extent as required for the contractor and to any extent otherwise required by state or federal law.

Section 5. CONTRACTS.--A contract for guardianship services shall include:

A. a requirement that contractors and their staff meet nationally recognized standards for guardianship services;

B. a requirement for adoption and compliance with a code of ethics for guardians;

C. the maximum caseload for guardians;

D. the fee schedule for services provided;

E. assurance that the civil rights of wards served by the contractor shall be met, including the right to be served in the most integrated setting appropriate to the needs of the ward;

F. provisions for access by the office of guardianship to records, wards and contractor staff as needed to monitor and enforce contract compliance and for quality assurance purposes; and

G. minimum financial accounting and reporting requirements.

Section 6. RESOLUTION OF COMPLAINTS.--

A. The office of guardianship shall establish by rule for the filing, investigation and resolution of complaints about guardianship services provided by contractors.

B. The office shall acknowledge receipt of the complaint, notify all parties involved and initiate an investigation within fifteen working days of the filing of the complaint.

C. A determination shall be made and a decision rendered on the complaint within sixty working days unless mutually agreed upon by all parties or unless a shorter time is required to protect the ward.

D. The office may refer complaints to other agencies for investigation or prosecution, as appropriate.

E. Complaints against the office or a staff member of the office shall be investigated by the human services department.

Section 7. TEMPORARY PROVISION--TRANSFERS.--

A. On the effective date of this act, all functions, appropriations, money, records, files, furniture, equipment, supplies and other property of the office of guardianship services of the office of the attorney general shall be transferred to the office of guardianship of the developmental disabilities planning council.

B. On the effective date of this act, all contractual obligations of the office of guardianship services of the office of the attorney general shall be binding on the office of guardianship of the developmental disabilities planning council.

C. On the effective date of this act, all references in the law to the office of guardianship services of the office of the attorney general shall be deemed to be references to the office of guardianship of the developmental disabilities planning council.

Section 8. REPEAL.--Section 8-5-16 NMSA 1978 (being Laws 1995, Chapter 140, Section 1) is repealed.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE GOVERNMENT AND URBAN

AFFAIRS COMMITTEE SUBSTITUTE

FOR HOUSE BILL 416, AS AMENDED

CHAPTER 281

CHAPTER 281, LAWS 2003

AN ACT

RELATING TO STATE FUNDS; PERMITTING CERTAIN DEPOSITS OF STATE FUNDS BY THE OFFICE OF CULTURAL AFFAIRS; AMENDING SECTION 6-10-3 NMSA 1978 (BEING LAWS 1923, CHAPTER 76, SECTION 2, AS AMENDED).

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

Section 1. Section 6-10-3 NMSA 1978 (being Laws 1923, Chapter 76, Section 2, as amended) is amended to read:

"6-10-3. PAYMENT OF STATE MONEY INTO TREASURY--SUSPENSE FUNDS.--All public money in the custody or under the control of any state official or agency obtained or received by any official or agency from any source, except as in Section 6-10-54 NMSA 1978 provided, shall be paid into the state treasury. It is the duty of every official or person in charge of any state agency receiving any money in cash or by check, draft or otherwise for or on behalf of the state or any agency thereof from any source, except as in Section 6-10-54 NMSA 1978 provided, to forthwith and before the close of the next succeeding business day after the receipt of the money to deliver or remit it to the state treasurer. Provided, however, that the money collected by the state park and recreation division of the energy, minerals and natural resources department and the state monuments of the museum division of the office of cultural affairs shall be deposited into the state treasury no later than ten days following collection. Provided that county treasurers shall remit all money received for taxes for state purposes or that are by law required to be remitted to the state treasurer on or before the tenth day of the next succeeding month following the receipt or collection thereof. Provided further that every official or person in charge of any state agency receiving any money, except as in

Section 6-10-54 NMSA 1978 provided, in cash or by check, draft or otherwise, on deposit, in escrow or in evidence of good faith to secure the performance of any contract or agreement with the state or with any department, institution or agency of the state, which money has not yet been earned so as to become the absolute property of the state, shall deliver or remit to the state treasurer within the times and in the manner in this section provided, which money shall be by the state treasurer deposited in a suspense account to the credit of the proper official, person, board or bureau in charge of any state agency so receiving the money; provided, however, that all money held by the commissioner of public lands on deposit, in escrow or in evidence of good faith to secure the performance of any contract or agreement with the state shall be delivered or remitted to the state treasurer within six months from the date this act is approved and at those times, in the amounts and from the various banks in which it is deposited as may be directed by the state board of finance."

HOUSE BILL 523

CHAPTER 282

CHAPTER 282, LAWS 2003

AN ACT

RELATING TO HEALTH; CREATING THE SCHOOL MEDICATION AIDES TRAINING PILOT PROGRAM; CREATING THE SCHOOL MEDICATION AIDES ADVISORY COMMITTEE.

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

Section 1. Section 61-3-1 NMSA 1978 (being Laws 1968, Chapter 44, Section 1) is amended to read:

"61-3-1. SHORT TITLE.--Chapter 61, Article 3 NMSA 1978 may be cited as the "Nursing Practice Act"."

Section 2. A new section of the Nursing Practice Act is enacted to read:

"SCHOOL MEDICATION AIDES TRAINING PILOT PROGRAM.--

A. The board shall adopt rules to establish a school medication aides training pilot program to educate and certify persons as school medication aides to administer prescription drugs or other medication to public school students during school hours. The purpose of the school medication aides training pilot program is to

determine whether certified medication aides can safely and efficiently administer routine medication in a public school setting. Approved training programs shall, through contract or agreement, provide remuneration to the board for administrative and other costs associated with oversight of the school medication aides training pilot program. The board, the department of health and the state department of public education shall collaborate to identify resources for the purpose of establishing the school medication aides training pilot program. The number of trainees and the number of school medication aides shall be based on the resources available; provided, however, that the school medication aides training pilot program shall be established in not more than five regions of the state and shall include a maximum of thirty school medication aide trainees.

B. For purposes of this section, "school medication aide" means a person who, under the supervision of a licensed registered nurse who is certified as a licensed school nurse by the state department of public education, may administer prescription medications and other medications to public school students.

C. The board shall appoint a school medication aides advisory committee to be chaired by a representative of the board and to include representatives from research nursing programs of New Mexico universities, the state department of public education, the department of health, an educational assistants association, a statewide association of nurses and a statewide association of school nurses. The school medication aides advisory committee shall develop and recommend educational requirements, appropriate levels of compensation and, in conjunction with the board, the department of health and the state department of public education, develop and recommend the procedures necessary for school medication aides to safely administer prescription drugs or other medications to public school students. The school medication aides advisory committee shall design the school medication aides training pilot program and shall evaluate the results of the training program and make recommendations regarding the training program to the board.

D. The board shall collaborate with the department of health and the state department of public education through the school medication aides advisory committee. The board shall develop and determine educational requirements and program requirements by administrative rule and shall determine educational standards and certification requirements to certify school medication aides to administer prescription drugs or other medications.

E. Persons wishing to practice as school medication aides shall make application to the board and obtain training and certification as determined by the board and shall be subject to all other regulations pertaining to medication aides as determined by the board.

F. A school medication aide trainee shall not administer prescription drugs or other medications to public school students except under the supervision and

direction of a licensed registered nurse who is certified as a licensed school nurse by the state department of public education."

Section 3. TEMPORARY PROVISION.--Public schools participating in the school medication aides training pilot program shall not, during the time period of the pilot program, which shall not extend beyond December 15, 2004, discharge a certified licensed school nurse in order to hire, instead, a school medication aide.

Section 4. TEMPORARY PROVISION.--The board shall consider the recommendations of the school medication aides advisory committee and report to the legislature the board's recommendations concerning the continuance of the school medication aides training pilot program no later than December 15, 2004.

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 528, AS AMENDED

CHAPTER 283

CHAPTER 283, LAWS 2003

AN ACT

RELATING TO UNCLAIMED PROPERTY; AMENDING SECTIONS OF THE NMSA 1978 TO EXCLUDE CHILD, SPOUSAL OR MEDICAL SUPPORT PAYMENTS FROM THE DEFINITION OF PROPERTY UNDER THE UNIFORM UNCLAIMED PROPERTY ACT (1995).

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

Section 1. Section 7-8A-1 NMSA 1978 (being Laws 1997, Chapter 25, Section 1) is amended to read:

"7-8A-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 7-8A-3 NMSA 1978 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, but excludes child, spousal or medical support received by the child support enforcement division of the human services department, the New Mexico IV-D agency. 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 27-2-27 NMSA 1978 (being Laws 1981, Chapter 90, Section 1, as amended) is amended to read:

"27-2-27. SINGLE STATE AGENCY--POWERS AND DUTIES.--

A. The department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV D of the federal act with the following duties and powers:

(1) establish the paternity of a child in the case of the child born out of wedlock with respect to whom an assignment of support rights has been executed in favor of the department;

(2) establish an order of support for children receiving aid to families with dependent children and, at the option of the department, for the spouse or former spouse with whom such children are living, but only if a support obligation has been established with respect to such spouse or former spouse, for whom no order of support currently exists and seek modification, based upon the noncustodial parent's ability to pay, of existing orders in which the support order is inadequate to properly care for the child and the spouse or former spouse with whom the child is living;

(3) enforce as the real party in interest any existing order for the support of children who are receiving aid to families with dependent children or of the spouse or former spouse with whom such children are living;

(4) provide services to non-aid families with dependent children in the establishment and enforcement of paternity and child support obligations, including locating the absent parent. For these services, the department is authorized to establish and collect fees, costs and charges permitted or required by federal law or by regulations adopted pursuant to that federal law; and

(5) adopt regulations for the disposition of unclaimed child, spousal or medical support payments.

B. In all cases handled by the department pursuant to the provisions of this section, the child support enforcement division of the department and any attorney employed by the division represent the department in establishing, modifying and enforcing support obligations."

HOUSE BILL 536, AS AMENDED

CHAPTER 284

CHAPTER 284, LAWS 2003

AN ACT

RELATING TO HEALTH FACILITIES; CLARIFYING THAT MENTAL HEALTH CENTERS SERVING CHILDREN ARE SUBJECT TO CHILDREN, YOUTH AND FAMILIES DEPARTMENT LICENSURE.

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

Section 1. Section 24-1-2 NMSA 1978 (being Laws 1973, Chapter 359, Section 2, as amended) is amended to read:

"24-1-2. DEFINITIONS.--As used in the Public Health Act:

A. "department" or "division" means the children, youth and families department as to child care centers, residential treatment centers that serve persons up to twenty-one years of age, community mental health centers that serve only persons up to twenty-one years of age and day treatment centers that serve persons up to twenty-one years of age, and the department of health as to all other health facilities;

B. "director" means the secretary;

C. "person", when used without further qualification, means an individual or any other form of entity recognized by law;

D. "health facility" means a public hospital, profit or nonprofit private hospital, general or special hospital, outpatient facility, maternity home or shelter, adult daycare facility, nursing home, intermediate care facility, boarding home not under the control of an institution of higher learning, child care center, shelter care home, diagnostic and treatment center, rehabilitation center, infirmary, community mental

health center that serves both children and adults or adults only, residential treatment center that serves persons up to twenty-one years of age, community mental health center that serves only persons up to twenty-one years of age and day treatment center that serves persons up to twenty-one years of age or a health service organization operating as a free-standing hospice or a home health agency. The designation of these entities as health facilities is only for the purposes of definition in the Public Health Act and does not imply that a free-standing hospice or a home health agency is considered a health facility for the purposes of other provisions of state or federal laws. "Health facility" also includes those facilities that, by federal regulation, must be licensed by the state to obtain or maintain full or partial, permanent or temporary federal funding. It does not include the offices and treatment rooms of licensed private practitioners; and

E. "secretary" means the secretary of children, youth and families as to child care centers and facilities and the secretary of health as to all other health facilities."

HOUSE BILL 557

CHAPTER 285

CHAPTER 285, LAWS 2003

AN ACT

RELATING TO PUBLIC FINANCE; AMENDING THE HOSPITAL FUNDING ACT AND STATUTES RELATING TO THE FINANCES OF STATE EDUCATIONAL INSTITUTIONS; DECLARING AN EMERGENCY.

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

Section 1. Section 4-48B-3 NMSA 1978 (being Laws 1981, Chapter 83, Section 3, as amended) is amended to read:

"4-48B-3. DEFINITIONS.--As used in the Hospital Funding Act:

A. "another political subdivision" means a political subdivision of New Mexico, including a municipality and a special hospital district organized under the Special Hospital District Act, but not including a county;

B. "class A county" means a county having a population of more than two hundred thousand persons according to the last federal decennial census;

C. "contracting hospital" means a hospital located in New Mexico that enters into a health care facilities contract with a county or counties or another political subdivision;

D. "county" means any county of the state;

E. "county commissioners" means the board of county commissioners of a county;

F. "county hospital" means a hospital owned by a county;

G. "health care facilities contract" means an agreement between a hospital and a county or counties, or between a hospital and a county or counties and another political subdivision, that provides for the payment by the county or counties of all or a portion of the proceeds of a mill levy to the hospital in exchange for the agreement by the hospital to use the funds only for nonsectarian purposes and to make available the following for the sick of the county or counties:

(1) hospital facilities that admit and treat patients without regard to race, sex, religion or national origin;

(2) hospital facilities that include x-ray, laboratory services and a pharmacy or drug room;

(3) adequate emergency equipment, personnel and procedures, including:

(a) a standby emergency power system;

(b) at least one person capable and authorized to initiate immediate lifesaving measures;

(c) facilities for emergency laboratory work, including, as a minimum, urinalysis, complete blood count, blood type and cross match; and

(d) diagnostic radiographic facilities;

(4) facilities, procedures and policies for prevention, control and reporting of communicable diseases, including one or more rooms for isolation of patients having or suspected of having communicable diseases;

(5) adequate records, including, as a minimum, a daily census and a register of all births, deliveries, deaths, admissions, emergency room admissions, discharges, operations, outpatients, inpatients and narcotics; and

(6) physical facilities, personnel, equipment and procedures that comply with the regulations promulgated by the public health division of the department of health;

H. "hospital governing board" means the board that governs a county hospital or the board of directors or trustees of a contracting hospital;

I. "mill levy" means the rate of the tax, at a rate specified in the Hospital Funding Act, in terms of dollars per thousand dollars of net taxable value of property subject to taxation within the county;

J. "municipality" means any city, town or village incorporated under a general act, special act or special charter; and

K. "equipping" or "re-equipping" means purchase or lease of property of a character subject to the allowance for depreciation under Section 167 of the Internal Revenue Code of, as amended or renumbered, and regulations promulgated in accordance with that section."

Section 2. Section 4-48B-12 NMSA 1978 (being Laws 1981, Chapter 83, Section 12, as amended) is amended to read:

"4-48B-12. TAX LEVIES AUTHORIZED.--

A. The county commissioners are authorized to impose a mill levy and collect annual assessments against the net taxable value of the property in a county to pay the cost of operating and maintaining county hospitals or to pay to contracting hospitals in accordance with a health care facilities contract and in class A counties to pay for the county's transfer to the county-supported medicaid fund pursuant to Section 27-10-4 NMSA 1978 as follows:

(1) in class A counties as defined in Section 4-44-1 NMSA 1978, the mill levy shall not exceed a rate of six dollars fifty cents (\$6.50), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a mill levy imposed pursuant to this paragraph, on each one thousand dollars (\$1,000) of net taxable value of property allocated to the county; however, if the county uses any portion, not to exceed one dollar fifty cents (\$1.50), of the rate authorized by this paragraph to meet the requirement of Section 27-10-4 NMSA 1978, the provisions of Section 7-37-7.1 NMSA 1978 do not apply to the portion of the rate necessary to produce the revenues required, provided that the portion of the rate does not exceed one dollar fifty cents (\$1.50); and

(2) in other counties, the mill levy shall not exceed four dollars twenty-five cents (\$4.25), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a mill levy imposed

pursuant to this paragraph, on each one thousand dollars (\$1,000) of net taxable value of property allocated to the county.

B. The mill levies provided in Paragraphs (1) and (2) of Subsection A of this section shall be made at the direction of the county commissioners, but only to the extent that the county commissioners deem it necessary to operate and maintain county hospitals, to pay the amounts required in the performance of any health care facilities contracts made pursuant to the Hospital Funding Act and to provide for a class A county's transfer to the county-supported medicaid fund pursuant to Section 27-10-4 NMSA 1978.

C. In the event that the mill levy provided for in Paragraph (1) of Subsection A of this section is not authorized by the electorate or the resulting mill levy proceeds are not remitted to the entity operating the hospital within a reasonable time period, any lease for operation of the hospital between a county and a state educational institution named in Article 12, Section 11 of the constitution of New Mexico may, at the option of the state educational institution, be terminated immediately. Except as provided in Subsection D of this section, in the event that the mill levy provided for in Paragraph (1) of Subsection A of this section is authorized, an amount not less than the amount that would be produced by a mill levy at the rate of four dollars (\$4.00), or any lower amount that would be required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon this rate, on each one thousand dollars (\$1,000) of net taxable value of property allocated to the county shall be provided from the proceeds of the mill levy to the state educational institution operating the hospital for hospital purposes unless the institution determines that the amount is not necessary.

D. A class A county imposing the mill levy provided for in Paragraph (1) of Subsection A of this section may enter into a mutual agreement with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico operating the hospital permitting the transfer to the county-supported medicaid fund by the county pursuant to Section 27-10-4 NMSA 1978 of not to exceed the amount that would be produced by a mill levy at a rate of one dollar fifty cents (\$1.50) applied to the net taxable value of property allocated to the county for the prior property tax year and also not to exceed the amount that would be produced by imposition of the county health care gross receipts tax.

E. The distribution of the mill levy authorized at the rates specified in Subsection A of this section shall be made to county and contracting hospitals as authorized in the Hospital Funding Act."

Section 3. Section 6-17-3 NMSA 1978 (being Laws 1939, Chapter 177, Section 3, as amended) is amended to read:

"6-17-3. CONDITIONS OF INCOME-PRODUCING PROJECT BONDS.--County, independent rural, union high and municipal boards of education or boards of regents may issue bonds or other evidence of indebtedness for the securing of the repayment of

any and all money as borrowed, which shall not run for a longer period than forty years from their date and which shall bear interest at a rate not to exceed a net of six percent per year, interest payable semiannually, and which bonds or other evidence of indebtedness shall irrevocably pledge for the prompt payment of the principal and interest thereof, as and when due and payable, the net income from any dormitory, auditorium, dining hall, refectory, stadium, swimming pool or any type of building, improvement or facility or any group of buildings, improvements or facilities for the purchase, erection, alteration, improvement, repair, furnishing or equipment of which the money is borrowed. The form of the bonds or other evidence of indebtedness, the time for which same shall run and times when payment of principal thereof shall be made, which shall be in yearly amounts as to payment of principal beginning not later than two years from and after the time when the money is borrowed and continuing to the end of the time for which the same shall run, and the manner and amount for which the same shall be sold and whether to be sold at public or private sale and the amount which is to be so borrowed for each specific purpose shall be approved by the state board of finance or the state board of education in the case of county, independent rural, union high and municipal boards of education. Despite anything elsewhere contained in this article, any such bonds may be sold at any price which does not result in an actual net interest cost to maturity, computed on the basis of standard tables of bond values, in excess of six percent.

County, independent rural, union high and municipal boards of education or boards of regents are hereby further authorized to execute a purchase-money mortgage or deed of trust or other security instrument constituting a purchase-money mortgage to further secure payment of any bonds issued under the provisions of this article for the purchase of any income-producing property. The purchase-money mortgage, deed of trust or other security instrument constituting a purchase-money mortgage shall limit the mortgagee for the satisfaction of the indebtedness secured solely to the property subject to the purchase-money mortgage, deed of trust or other security instrument.

The terms and conditions of any purchase-money mortgage, deed of trust or other security instrument constituting a purchase-money mortgage herein authorized shall be approved by the state board of finance in the case of a board of regents or by the state board of education in the case of a board of education.

A state educational institution operating a county hospital pursuant to the Hospital Funding Act may, in connection with the issuance of bonds in accordance with the provisions of this article, execute a mortgage, deed of trust or other security instrument covering the state educational institution's ownership or leasehold interest in all or any part of the county hospital and other related health care facilities operated by the state educational institution to further secure payment of bonds issued under the provisions of this article to finance or refinance the purchase, erection, expansion, alteration, improvement, repair, furnishing or equipping of such county hospital or other related health care facilities. The mortgage, deed of trust or security instrument shall limit the right of the mortgagee or other secured party to seek a deficiency judgment against the state educational institution."

Section 4. Section 6-17-12 NMSA 1978 (being Laws 1939, Chapter 177, Section 11, as amended) is amended to read:

"6-17-12. DEBT AGAINST STATE NOT TO BE CREATED BY INCOME-PRODUCING PROJECT BONDS.--No obligation created under this article shall ever be or become a charge or debt against the state, but all such obligations, including principal and interest, shall be payable solely from the net income derived from the buildings, facilities and improvements as in this article specified; provided, however, that:

A. any purchase-money mortgage, deed of trust or other security instrument constituting a purchase-money mortgage may be foreclosed against the buildings, facilities or improvements so pledged without the right to a deficiency judgment; and

B. any mortgage, deed of trust or other security instrument given by a state educational institution operating a county hospital pursuant to the Hospital Funding Act may be foreclosed against the buildings, facilities or improvements so pledged without the right to a deficiency judgment."

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 558

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 286

CHAPTER 285, LAWS 2003

AN ACT

RELATING TO NOTARIES PUBLIC; ENACTING THE NOTARY PUBLIC ACT;
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--This act may be cited as the "Notary Public Act".

Section 2. DEFINITIONS.--As used in the Notary Public Act:

A. "acknowledgment" means a notarial act in which a person at a single time and place:

(1) appears in person before the notary public and presents a document;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) indicates to the notary public that the signature on the document was voluntarily affixed by the person for the purposes stated within the document and, if applicable, that the person had due authority to sign in a particular representative capacity;

B. "affirmation" means a notarial act that is legally equivalent to an oath and in which a person at a single time and place:

(1) appears in person before the notary public;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) makes a vow of truthfulness or fidelity on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear";

C. "commission" means both to empower to perform notarial acts and the written evidence of authority to perform those acts;

D. "copy certification" means a notarial act in which a notary public:

(1) is presented with a document that is neither a vital record, a public record nor publicly recordable;

(2) copies or supervises the copying of the document using a photographic or electronic copying process;

(3) compares the document to the copy; and

(4) determines that the copy is accurate and complete;

E. "credible witness" means an honest, reliable and impartial person who personally knows the person appearing before a notary public and takes an oath or affirmation from the notary to vouch for that person's identity;

F. "jurat" means a notarial act in which a person at a single time and place:

(1) appears in person before the notary public and presents a document;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence;

(3) signs the document in the presence of the notary public; and

(4) takes an oath or affirmation from the notary public that the person is voluntarily affixing his signature and vouching for the truthfulness or accuracy of the signed document;

G. "notarial act" means any act that a notary public or other person is empowered to perform pursuant to the Notary Public Act or the Uniform Law on Notarial Acts;

H. "notarial certificate" means the part of, or attachment to, a notarized document that is completed by the notary public, bears the notary public's signature and seal and states the facts attested by the notary public in a particular notarization;

I. "notary public" means any person commissioned by the governor to perform official acts pursuant to the Notary Public Act;

J. "oath" means a notarial act that is legally equivalent to an affirmation and in which a person at a single time and place:

(1) appears in person before the notary public;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) makes a vow of truthfulness or fidelity on penalty of perjury while invoking a deity or using any form of the word "swear";

K. "official misconduct" means:

(1) a notary public's performance of an act prohibited, or failure to perform an act mandated, by the Notary Public Act or by any other law in connection with a notarial act by the notary public; or

(2) a notary public's performance of an official act in a manner found by the governor to be negligent or against the public interest;

L. "personal appearance" means that the principal and the notary public are physically close enough to see, hear, communicate with and give identification documents to each other;

M. "personally known" means familiarity with a person resulting from interactions with that person over a period of time sufficient to dispel any reasonable uncertainty that the person has the identity claimed;

N. "principal" means:

(1) a person whose signature is notarized; or

(2) a person, other than a credible witness, taking an oath or affirmation from the notary public;

O. "satisfactory evidence of identity" means identification of a person based on:

(1) at least one current document issued by a federal, state or tribal government agency bearing the photographic image of the person's face and signature and a physical description of the person, though a properly stamped passport without a physical description is acceptable; or

(2) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the person, or of two credible witnesses unaffected by the document or transaction who each personally knows the person and shows to the notary public documentary identification as described in Paragraph (1) of this subsection; and

P. "seal" means a device, including a rubber stamp, for affixing on a paper document an image containing the notary public's name, the words "State of New Mexico" and, in the case of a rubber stamp, the commission expiration date.

Section 3. QUALIFICATIONS.--A notary public shall:

A. be a resident of New Mexico;

B. be at least eighteen years of age;

C. be able to read and write the English language;

D. not have pleaded guilty or nolo contendere to a felony or been convicted of a felony; and

E. not have had a notary public commission revoked during the past five years.

Section 4. APPLICATION.--An applicant for appointment as a notary public shall submit to the secretary of state:

A. an application for appointment on a form prescribed by the secretary of state that includes a statement by the applicant certifying that the applicant is qualified, contains evidence of the applicant's good moral character as shown by signatures of two residents of this state and the oath prescribed by the constitution of New Mexico for state officers;

B. a bond in the amount of ten thousand dollars (\$10,000) executed by a licensed surety for a term of four years commencing on the commission's effective date and terminating on its expiration date;

C. an application that is signed by the applicant using the applicant's surname and one given name, plus an initial or additional name if the applicant so desires, or surname and at least two initials; and

D. an application fee in the amount of twenty dollars (\$20.00).

Section 5. APPOINTMENT--TERM.--Upon receipt of the completed application for appointment and the application fee, and upon approval of the applicant's bond, the secretary of state shall notify the governor, who shall appoint the applicant as a notary public for a term of four years from the date of appointment unless sooner removed by the governor. The secretary of state shall issue a certificate of appointment to each notary public commissioned by the governor. A certificate of appointment shall not be possessed or used by any other person or surrendered to an employer upon termination of employment.

Section 6. REAPPOINTMENT.--At least thirty days before expiration of each notary public term, the secretary of state shall mail a notice of expiration to the notary public's mailing address of record. A notary public may be reappointed upon making application in the same manner as required for an original application.

Section 7. POWERS AND PROHIBITIONS.--

A. A notary public is empowered to perform the following notarial acts:

(1) acknowledgments;

(2) oaths and affirmations;

(3) jurats;

(4) copy certifications; and

(5) any other act so authorized by the law of this state.

B. A notary public shall not perform a notarial act if the principal:

(1) is not in the notary public's presence at the time of notarization;

(2) is not personally known to the notary public or identified by the notary public through satisfactory evidence of identity;

(3) shows a demeanor that causes the notary public to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act; or

(4) in the notary public's judgment, is not acting of his own free will.

C. A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

(1) the mark is affixed in the presence of the notary public and of two credible witnesses unaffected by the document;

(2) both witnesses sign their own names beside the mark;

(3) the notary public writes below the mark: "Mark affixed by (name of signer by mark) in presence of (names of witnesses) and undersigned notary public pursuant to Subsection C of Section 7 of the Notary Public Act"; and

(4) the notary public notarizes the signature by mark through an acknowledgment or jurat.

D. A notary public may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:

(1) the person directs the notary public to do so in the presence of two credible witnesses unaffected by the document;

(2) the notary public signs the person's name in the presence of the person and the witnesses;

(3) both witnesses sign their own names beside the signature;

(4) the notary public writes below the signature: "Signature affixed by notary public in the presence of (names and addresses of person and two witnesses) pursuant to Subsection D of Section 7 of the Notary Public Act"; and

(5) the notary public notarizes the signature through an acknowledgment or jurat.

Section 8. REFUSAL TO NOTARIZE.--

A. A notary public shall not refuse to perform a notarial act based on a principal's race, age, gender, sexual orientation, religion, national origin, health or disability or status as a non-client or non-customer of the notary public or the notary public's employer.

B. A notary public shall perform a notarial act for a person requesting such an act who tenders the appropriate fee, unless:

(1) the notary public knows or has good reason to believe that the notarial act or the associated transaction is unlawful;

(2) the act is prohibited; or

(3) the number of notarial acts requested practicably precludes completion of all acts at once, in which case the notary public shall arrange for later completion of the remaining acts.

Section 9. SURETY BOND AND DUTIES OF SURETY.--

A. A commission shall not be issued until an oath of office and a ten-thousand-dollar (\$10,000) bond have been provided on the application for appointment and approved by the secretary of state. The bond shall be executed by a licensed surety, for a term of four years commencing on the commission's effective date and terminating on its expiration date, with payment of bond funds to any person conditioned upon the notary public's misconduct.

B. A person damaged by an unlawful act, negligence or misconduct of a notary public in his official capacity may bring a civil action on the notary public's official bond.

C. The surety for a notary public bond shall report all claims against the bond to the secretary of state.

D. If a notary public bond has been exhausted by claims paid out by the surety, the governor shall suspend the notary public's commission until:

(1) a new bond in the amount of ten thousand dollars (\$10,000) is obtained by the notary public; and

(2) the notary public's fitness to serve the remainder of the commission is determined by the governor.

E. In the event of a suspension of a notary public's commission by the governor, the notary public shall not perform any notarial acts until the requirements of Subsection D of this section have been fulfilled and the governor removes the notary public's suspension.

Section 10. AVOIDANCE OF INFLUENCE.--

A. A notary public shall not influence a person either to enter into or avoid a transaction involving a notarial act by the notary public, except that the notary public may advise against a transaction if the notary public knows or has good reason to believe that the notarial act or the associated transaction is unlawful.

B. A notary public has neither the duty nor the authority to investigate, ascertain or attest to the lawfulness, propriety, accuracy or truthfulness of a document or transaction involving a notarial act.

Section 11. FALSE OR INCOMPLETE CERTIFICATE, AUTHENTICATING DOCUMENTS IN ABSENCE OF PRINCIPAL.--

A. If a notary public or any other officer authorized by law to make or give a certificate or other writing makes or delivers as true a certificate or writing containing statements that he knows to be false, or appends his official signature to acknowledgments or other documents when the principals executing the documents have not appeared in person before him, is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment for a period not exceeding six months, or both.

B. A notary public shall not affix an official signature or seal on a notarial certificate that is incomplete.

C. A notary public shall not provide or send a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary public's presence.

Section 12. IMPROPER DOCUMENTS.--

A. A notary public shall not notarize a signature:

(1) on a blank or incomplete document; or

(2) on a document without notarial certificate wording.

B. A notary public shall neither certify nor authenticate a photograph.

Section 13. INTENT TO DECEIVE.--A notary public shall not perform any official action with the intent to deceive or defraud.

Section 14. TESTIMONIALS.--A notary public shall not use the official notary public title or seal to endorse, promote, denounce or oppose any product, service, contest, candidate or other offering.

Section 15. UNAUTHORIZED PRACTICE OF LAW.--

A. If notarial certificate wording is not provided or indicated for a document, a non-attorney notary public shall not determine the type of notarial act or certificate to be used.

B. A non-attorney notary public shall not assist another person in drafting, completing, selecting or understanding a document or transaction requiring a notarial act.

C. This section does not preclude a notary public who is duly qualified, trained or experienced in a particular industry or professional field from selecting, drafting, completing or advising on a document or certificate related to a matter within that industry or field.

D. A notary public shall not claim to have powers, qualifications, rights or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.

E. A notary public shall not use the term "notario publico" or any equivalent non-English term in any business card, advertisement, notice or sign.

Section 16. FEES.--

A. For performing a notarial act, a notary public may charge the maximum fee specified in this section, charge less than the maximum fee or waive the fee.

B. A notary public shall not discriminate by conditioning the fee for a notarial act on the attributes of the principal.

C. An employer shall not establish fees for notarial services that are in excess of those specified in this section nor on the attributes of the principal as delineated.

D. The maximum fees that may be charged by a notary public for notarial acts are:

- (1) for acknowledgments, five dollars (\$5.00) per acknowledgment;
- (2) for oaths or affirmations without a signature, five dollars (\$5.00) per person;
- (3) for jurats, five dollars (\$5.00) per jurat; and
- (4) for copy certifications, fifty cents (\$.50) per page with a minimum total charge of five dollars (\$5.00).

E. A notary public may charge a travel fee not to exceed thirty cents (\$.30) per mile when traveling to perform a notarial act if:

- (1) the notary public and the person requesting the notarial act agree upon the travel fee in advance of the travel; and
- (2) the notary public explains to the person requesting the notarial act that the travel fee is separate from the notarial fees and not mandated by law.

Section 17. OFFICIAL SIGNATURE.--In notarizing a paper document, a notary public shall:

- A. sign by hand on the notarial certificate exactly and only the name indicated on the notary public's seal or stamp;
- B. not sign using a facsimile stamp or an electronic or other printing method; and
- C. affix the official signature only at the time the notarial act is performed.

Section 18. OFFICIAL SEAL OR STAMP.--

- A. A notary public shall keep an official seal or stamp that is the exclusive property of the notary public. The seal or stamp shall not be possessed or used by any other person or surrendered to an employer upon termination of employment.
- B. A notarial seal or stamp shall contain the exact name of the notary public as it appears on the application for appointment and the words "NOTARY PUBLIC - STATE OF NEW MEXICO" and shall authenticate official acts with the seal or stamp.
- C. Each notary public shall authenticate official acts with a notarial seal or stamp that, if a seal, shall contain the notary public's name and the words "NOTARY

PUBLIC - STATE OF NEW MEXICO" and that if a stamp, shall be in substantially the following form:

"SEAL

STATE OF

NEW MEXICO

Official Seal

(name of notary public printed)".

D. An impression or image of the seal or stamp shall be affixed only at the time the notarial act is performed.

E. When not in use, the seal or stamp shall be kept secure and accessible only to the notary public.

F. Within ten days after the seal or stamp of a notary public is stolen, lost, damaged or otherwise rendered incapable of affixing a legible impression or image, the notary public, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the secretary of state by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy of any pertinent police report.

G. As soon as reasonably practicable after resignation, revocation, change of name, expiration of a commission or death of the notary public, the seal or stamp shall be destroyed or defaced so that it may not be misused.

Section 19. ENDORSING DATE OF COMMISSION.--Upon performance of any notarial act, the notary public shall, immediately opposite or following the notary public's signature, endorse the date of the expiration of commission. The endorsement may be legibly written, stamped or printed upon the instrument and shall be substantially in the following form:

"My commission expires (stating date of expiration of commission)".

Section 20. CHANGE OF NAME.--

A. Upon any change of a notary public's name, the notary public shall, within ten days of such change, make application to the secretary of state for issuance

of a corrected commission. The application shall be on a form prescribed by the secretary of state and shall contain an impression or image of the new seal or stamp bearing the new name of the notary public exactly as it appears on the application. Upon receipt of the completed application, the secretary of state shall issue a corrected certificate of appointment showing the notary public's new name. The commission on the corrected certificate of appointment expires on the same date as the commission on the certificate of appointment it replaces.

B. The notary public shall notify the surety for the notary public's bond in writing within ten days of a change of name and provide the surety with the new name of the notary public exactly as it was provided to the secretary of state. Within ten days of the notice from the notary public, the surety shall issue a rider to the notary public's bond and distribute a copy of the rider to the notary public and the secretary of state.

Section 21. CHANGE OF ADDRESS.--

A. A notary public shall notify the secretary of state in writing of a change of the notary public's residence, business or mailing address within ten days after such change.

B. A notary public shall notify the surety for the notary public's bond in writing within ten days of a change of residence, business or mailing address.

Section 22. CERTIFICATION.--Upon request, the secretary of state shall certify to a notary public's commission.

Section 23. RESIGNATION.--

A. A notary public who resigns his commission shall send to the secretary of state by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice indicating the effective date of resignation.

B. A notary public who ceases to reside in New Mexico, or who becomes permanently unable to perform notarial duties, shall resign his commission.

Section 24. DISPOSITION OF THE SEAL AND STAMP.--

A. When a notary public commission expires or is resigned or revoked, the notary public shall, as soon as reasonably practicable, destroy or deface all notary seals and stamps so that they may not be misused.

B. If a notary public dies during the term of commission or before fulfilling the requirement stipulated in Subsection A of this section, the notary public's personal representative shall notify the secretary of state of the death in writing and, as soon as

reasonably practicable, destroy or deface all notary seals and stamps so that they may not be misused.

Section 25. DISQUALIFIED NOTARY PUBLIC EXERCISING POWERS.--Any notary public who exercises the duties of his office with the knowledge that his commission has expired or that he is otherwise disqualified is guilty of a misdemeanor and upon conviction shall be punished by a fine of five hundred dollars (\$500) and shall be removed from office by the governor.

Section 26. REMOVAL FROM OFFICE.--

A. The governor may revoke the commission of any notary public who:

(1) submits an application for appointment as a notary public that contains a false statement;

(2) is or has pleaded guilty or nolo contendere to a felony or been convicted of a felony or of a misdemeanor arising out of a notarial act performed by him;

(3) engages in the unauthorized practice of law;

(4) ceases to be a New Mexico resident; or

(5) commits a malfeasance in office.

B. A commission may be revoked pursuant to the provisions of this section only if action is taken subject to the rights of the notary public to notice, hearing, adjudication and appeal.

C. Resignation or expiration of a commission does not terminate or preclude an investigation into the notary public's conduct by the governor or by the attorney general, a district attorney or any law enforcement agency of this state, who may pursue the investigation to a conclusion, whereupon it shall be made a matter of public record whether or not the finding would have been grounds for revocation.

D. In lieu of revocation, the governor may deliver a written official warning to cease misconduct to any notary public whose actions are judged to be official misconduct.

Section 27. REPEAL.--Sections 14-12-1 through 14-12-20 NMSA 1978 (being Laws 1969, Chapter 168, Sections 1 through 5, Laws 1977, Chapter 106, Section 1, Laws 1969, Chapter 168, Sections 6 through 8, Laws 1909, Chapter 55, Sections 8 through 10, Laws

1969, Chapter 168, Sections 9 through 11, Laws 1909, Chapter 55, Sections 18 and 20 through 22 and Laws 1921, Chapter 82, Section 1, as amended) are repealed.

Section 28. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 612

WITH CERTIFICATE OF CORRECTION

CHAPTER 287

CHAPTER 287, LAWS 2003

AN ACT

RELATING TO CHILD SUPPORT; REQUIRING HEALTH CARE COVERAGE IN CHILD SUPPORT ORDERS AND THE USE OF THE NATIONAL MEDICAL SUPPORT NOTICE; DECLARING AN EMERGENCY.

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

Section 1. Section 40-4C-1 NMSA 1978 (being Laws 1990, Chapter 78, Section 1) is amended to read:

"40-4C-1. SHORT TITLE.--Chapter 40, Article 4C NMSA 1978 may be cited as the "Mandatory Medical Support Act"."

Section 2. Section 40-4C-2 NMSA 1978 (being Laws 1990, Chapter 78, Section 2) is amended to read:

"40-4C-2. PURPOSE.--To assure that children have access to quality medical care, it is the purpose of the Mandatory Medical Support Act to require parents responsible for the support of minor children to provide or purchase health insurance and dental insurance coverage for those children when such coverage is available."

Section 3. Section 40-4C-3 NMSA 1978 (being Laws 1990, Chapter 78, Section 3, as amended) is amended to read:

"40-4C-3. DEFINITIONS.--As used in the Mandatory Medical Support Act:

A. "court" means any district court ordering child support of an obligor;

B. "dental insurance coverage" means those coverages generally associated with a dental plan of benefits, not including medicaid coverage authorized by Title 19 of the Social Security Act and administered by the department;

C. "department" means the human services department;

D. "employer" means an individual, organization, agency, business or corporation hiring an obligor for pay;

E. "health insurance coverage" means those coverages generally associated with a medical plan of benefits, not including medicaid coverage authorized by Title 19 of the Social Security Act and administered by the department;

F. "insurer" means an employment-related or other group health care insurance plan, a health maintenance organization, a nonprofit health care plan or other type of health care insurance plan under which medical or dental services are provided, regardless of service delivery mechanism;

G. "minor child" means a child younger than eighteen years of age who has not been emancipated;

H. "national medical support notice" means a court-ordered notice to an employer that an employee's child must be covered by the employment-related group health care insurance plan;

I. "obligee" means a person to whom a duty of support is owed or a person, including the department, who has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order, regardless of whether the person to whom a duty of support is owed is a recipient of public assistance; and

J. "obligor" means a person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or for registration of a support order is commenced."

Section 4. Section 40-4C-4 NMSA 1978 (being Laws 1990, Chapter 78, Section 4) is amended to read:

"40-4C-4. MEDICAL SUPPORT--ORDER.--

A. The court shall order an obligor to name the minor child on behalf of whom support is owed as an eligible dependent of health insurance coverage or dental insurance coverage if:

(1) health insurance coverage or dental insurance coverage that meets or exceeds the minimum standards required under the Mandatory Medical Support Act is not available at a more reasonable cost to the obligee than to the obligor for coverage of the minor child; and

(2) such health insurance coverage or dental insurance coverage is available to the obligor through an employment-related or other group health care insurance plan.

B. The court may consider the impact of the cost of health insurance coverage or dental insurance coverage on the payment of the base child support amounts in determining whether such insurance coverage shall be ordered.

C. The court may order the obligor to obtain health insurance coverage or dental insurance coverage for any minor child to whom support is owed, if:

(1) the court finds that health insurance coverage or dental insurance coverage for the minor child is not available to the obligor through an employment-related or other group health care insurance plan; and

(2) the obligee does not have such health insurance coverage or dental insurance coverage available at a more reasonable cost than the obligor for coverage of the minor child.

D. The court shall require the obligor to be liable for all or a portion of the medical or dental expenses of the minor child that are not covered by the required health insurance coverage or dental insurance coverage, if:

(1) the court finds that the health insurance coverage or dental insurance coverage required to be obtained by the obligor or available to the obligee does not pay all the reasonable and necessary medical or dental expenses of the minor child; and

(2) the court finds that the obligor has the financial resources to contribute to the payment of these medical or dental expenses.

E. The court shall require the obligor to provide health insurance coverage or dental insurance coverage for the benefit of the obligee if it is available at no additional cost to the obligor.

F. The court in any proceeding for the establishment, enforcement or modification of a child support obligation may modify an existing order of support or establish child support, as applicable, for the minor child to incorporate the provisions for medical support ordered pursuant to the Mandatory Medical Support Act."

Section 5. Section 40-4C-6 NMSA 1978 (being Laws 1990, Chapter 78, Section 6, as amended) is amended to read:

"40-4C-6. OBLIGATIONS--EMPLOYERS, UNIONS AND INSURERS--PLAN.--

A. Upon receipt of a national medical support notice or the court order for health insurance coverage or dental insurance coverage pursuant to Section 40-4C-5 NMSA 1978 or upon application of the obligor pursuant to the court order, the employer or union shall enroll the minor child as an eligible dependent in the health insurance plan or dental insurance plan and withhold any required premium from the obligor's income or wages. If more than one health insurance plan or dental insurance plan is offered by the employer, union or insurer, the minor child shall be enrolled in the plan in which the obligor is enrolled. If the obligor is not enrolled in a plan, the child shall be enrolled in a plan that meets the minimum coverage criteria required pursuant to the Mandatory Medical Support Act. If the obligor is not enrolled in a plan, the premiums charged for the child or children of the obligor shall be those charged for the enrollment of the obligor only.

B. In any instance in which the obligor is required by a court order to provide health insurance coverage or dental insurance coverage for the minor child and the obligor is eligible for health insurance coverage or dental insurance coverage through an employment-related or other group health care insurance plan, the employer, union or insurer shall do the following:

(1) permit the obligor to enroll for health insurance coverage or dental insurance coverage the minor child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(2) enroll the minor child for health insurance coverage or dental insurance coverage if the obligor fails to enroll the minor child upon application by the obligee or the department;

(3) not disenroll or eliminate coverage of any minor child so enrolled unless:

(a) the employer is provided with satisfactory written evidence that the court order is no longer in effect;

(b) the minor child is or will be enrolled in comparable health coverage that meets the coverage criteria required pursuant to the Mandatory Medical Support Act and that will take effect not later than the effective date of the disenrollment;

(c) the obligor has terminated employment; or

(d) the employer has eliminated health insurance coverage or dental insurance coverage for all of its employees; and

(4) withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage or dental insurance coverage and to pay the share of premiums to the insurer, unless otherwise provided in law or regulation.

C. In those instances where the obligor fails or refuses to execute any document necessary to enroll the minor child in the health insurance plan or dental insurance plan ordered by the court, the required information and authorization may be provided by the department or the custodial parent or guardian of the minor child.

D. Information and authorization provided by the department or the custodial parent or guardian of the minor child shall be valid for the purpose of meeting enrollment requirements of the health insurance plan or dental insurance plan and shall not affect the obligation of the employer or union and the insurer to enroll the minor child in the health insurance plan or dental insurance plan for which other eligibility, enrollment, underwriting terms and other requirements are met. In instances in which the minor child is insured through the obligor, the insurer shall provide all information to the obligee that may be helpful or necessary for the minor child to obtain benefits.

E. A minor child that an obligor is required to cover as an eligible dependent pursuant to the Mandatory Medical Support Act shall be considered for insurance coverage purposes as a dependent of the obligor until the child is emancipated or until further order of the court.

F. In instances in which the minor child is insured through the obligor, the insurer is prohibited from denying health insurance coverage or dental insurance coverage of the minor child on the grounds that the minor child was born out of wedlock, that the minor child is not claimed as a dependent on the obligor's federal income tax return or that the minor child does not reside with the obligor or reside in the insurer's service area.

G. In instances in which the minor child is insured through the obligor, the insurer is prohibited from imposing requirements on the department that are different from requirements applicable to an agent or assignee of any other individual covered by the insurer.

H. In instances in which the minor child is insured through the obligor, the insurer shall permit the obligee or health care provider, with the approval of the obligee, to submit claims for covered services without the approval of the obligor. The insurer shall make payments on submitted claims directly to the obligee or the health care provider.

I. When the obligor is terminated, the employer shall notify the department of the termination."

Section 6. Section 40-4C-9 NMSA 1978 (being Laws 1990, Chapter 78, Section 9) is amended to read:

"40-4C-9. AUTHORIZATION FOR CLAIMS.--The signature of the custodial parent of the minor child insured pursuant to a court order or a directive issued by the department is a valid authorization to the health insurer or dental insurer for purposes of processing an insurance reimbursement payment."

Section 7. Section 40-4C-10 NMSA 1978 (being Laws 1990, Chapter 78, Section 10) is amended to read:

"40-4C-10. EMPLOYER, UNION OR INSURER NOTICE.--When an order for health insurance coverage or dental insurance coverage pursuant to the Mandatory Medical Support Act is in effect, upon termination of the obligor's employment or upon termination of the insurance coverage, the employer, union or insurer shall make a good faith effort to notify the obligee within ten days of the termination date with notice of conversion privileges."

Section 8. Section 40-4C-11 NMSA 1978 (being Laws 1990, Chapter 78, Section 11) is amended to read:

"40-4C-11. RELEASE OF INFORMATION.--When an order for health insurance coverage or dental insurance coverage pursuant to the Mandatory Medical Support Act is in effect, the obligor's employer, union or insurer shall release to the obligee, upon request, information on such coverage, including the name of the insurer."

Section 9. Section 40-4C-12 NMSA 1978 (being Laws 1990, Chapter 78, Section 12, as amended) is amended to read:

"40-4C-12. OBLIGOR LIABILITY.--

A. An obligor who fails to maintain the health insurance coverage or dental insurance coverage for the benefit of a minor child as ordered pursuant to the Mandatory Medical Support Act shall be liable to the obligee for any medical and dental expenses incurred from the date of the court order.

B. An obligor who receives payment from a third party for the costs of medical or dental services provided to a minor child and who fails to use the payment to reimburse the department is liable to the department to the extent of the department's payment for the services. The department is authorized to intercept the obligor's tax refund or use other means of enforcement available to the department to recoup amounts paid. Claims for current or past due child support take priority over any claims made pursuant to this subsection. Proof of failure to maintain health insurance coverage or dental insurance coverage as ordered constitutes a showing of increased need by the obligee and provides a basis for modification of the obligor's child support order.

C. An obligor is required to provide the department with the following information concerning health insurance coverage or dental insurance coverage:

- (1) obligor's name and tax identification number;
- (2) type of coverage (single or family);
- (3) name, address and identifying number of health insurance coverage or dental insurance coverage;
- (4) name and tax identification number of other individuals who are provided health insurance coverage or dental insurance coverage by the obligor;
- (5) effective period of coverage; and
- (6) name, address and the tax identification number of the employer."

Section 10. Section 40-4C-13 NMSA 1978 (being Laws 1990, Chapter 78, Section 13, as amended) is amended to read:

"40-4C-13. DEPARTMENT--DUTIES.--The department shall implement and enforce an order for health insurance coverage or dental insurance coverage when the minor child receives public assistance or medicaid or upon application of the obligee to the department and payment by the obligee of any fees required by the department."

Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 614, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 288

CHAPTER 288, LAWS 2003

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING THE INSPECTION OF PUBLIC RECORDS ACT TO PROVIDE AN EXCEPTION FOR CERTAIN PUBLIC RECORDS

THAT COULD BE USED TO FACILITATE THE PLANNING OR EXECUTION OF A TERRORIST ATTACK.

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

Section 1. Section 14-2-1 NMSA 1978 (being Laws 1947, Chapter 130, Section 1, as amended) is amended to read:

"14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--

A. Every person has a right to inspect public records of this state except:

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

(2) letters of reference concerning employment, licensing or permits;

(3) letters or memorandums that are matters of opinion in personnel files or students' cumulative files;

(4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed above;

(5) as provided by the Confidential Materials Act;

(6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

(7) public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education;

(8) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; and

(9) as otherwise provided by law.

B. At least twenty-one days before the date of the meeting of the governing board of a public institution of higher education at which final action is taken

on selection of the person for the position of president of the institution, the governing board shall give public notice of the names of the finalists being considered for the position. The board shall consider in the final selection process at least five finalists. The required notice shall be given by publication in a newspaper of statewide circulation and in a newspaper of county-wide circulation in the county in which the institution is located. Publication shall be made once and shall occur at least twenty-one days and not more than thirty days before the described meeting.

C. Postponement of a meeting described in Subsection B of this section for which notice has been given does not relieve the governing body from the requirement of giving notice of a rescheduled meeting in accordance with the provisions of Subsection B of this section.

D. Action taken by a governing body without compliance with the notice requirements of Subsections B and C of this section is void.

E. Nothing in Subsections B through D of this section prohibits a governing body from identifying or otherwise disclosing the information described in this section."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 254, AS AMENDED

CHAPTER 289

CHAPTER 289, LAWS 2003

AN ACT

RELATING TO TAXATION; REPEALING A SECTION OF LAWS 1995 PERTAINING TO THE RATE OF THE GASOLINE TAX.

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

Section 1. REPEAL.--Laws 1995, Chapter 6, Section 11 is repealed.

HOUSE BILL 644

CHAPTER 290

CHAPTER 290, LAWS 2003

AN ACT

RELATING TO HUNTING; PROVIDING FOR THE RESERVATION OF TWO ELK LICENSES FOR PERSONS UNDER THE AGE OF TWENTY-ONE WITH LIFE-THREATENING ILLNESSES.

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

Section 1. A new section of Chapter 17, Article 3 NMSA 1978 is enacted to read:

"ELK LICENSES RESERVED.--The state game commission shall reserve no more than two elk licenses a year for sale to persons under the age of twenty-one who have been determined by a licensed physician to have a life-threatening illness and who have been qualified through a nonprofit wish-granting organization approved by the commission."

HOUSE BILL 650

CHAPTER 291

CHAPTER 291, LAWS 2003

AN ACT

NRELATING TO MEDICAID; PRESCRIBING THE DUTIES OF THE MEDICAID FRAUD CONTROL UNIT.

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

Section 1. 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--INVESTIGATION--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.

H. The unit shall coordinate with the human services department, department of health and children, youth and families department to develop a joint protocol establishing responsibilities and procedures, including prompt and appropriate referrals and necessary action regarding allegations of program fraud, to ensure prompt investigation of suspected fraud upon the medicaid program by any provider. These departments shall participate in the joint protocol and enter into a memorandum of understanding defining procedures for coordination of investigations of fraud by medicaid providers to eliminate duplication and fragmentation of resources. The memorandum of understanding shall further provide procedures for reporting to the legislative finance committee the results of all investigations every calendar quarter. The unit shall report to the legislative finance committee a detailed disposition of recoveries and distribution of proceeds every calendar quarter."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 668, AS AMENDED

CHAPTER 292

CHAPTER 292, LAWS 2003

AN ACT

RELATING TO PROPERTY TAXATION; SPECIFYING COUNTY ASSESSOR AS DEFENDANT FOR CERTAIN REFUND CLAIMS.

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

Section 1. Section 7-38-40 NMSA 1978 (being Laws 1973, Chapter 258, Section 80, as amended) is amended to read:

"7-38-40. CLAIMS FOR REFUND--CIVIL ACTION.--

A. Claims for refund shall be filed by the property owner as a civil action in the district court for the county in which the valuation was determined if the property was locally valued or in the district court for Santa Fe county if valued by the department. Claims shall:

(1) be filed against the director as party defendant if the property was valued by the department or against the county assessor as party defendant if the property was valued by the assessor and shall be filed no later than the sixtieth day after the first installment of the property tax for which a claim for refund is made is due;

(2) state the property owner's name and address and the name and address of any person other than the property owner to whom the tax bill was sent;

(3) state the basis of the claim for refund;

(4) state the amount of the refund to which the property owner believes he is entitled, the amount of property taxes admitted as legally due and the property taxes paid; and

(5) demand the refund to him of the amount to which he claims entitlement.

B. The director shall notify the appropriate county treasurer immediately when a claim for refund is filed against the director.

C. The property owner, the county assessor or the director may appeal to the court of appeals from any final decision or order of the district court in a claim for refund case in which they are parties.

D. Upon the final determination of the property owner's claim filed against the director, the director shall send a copy of the final order to the county treasurer and shall order the county assessor to change the valuation records to clearly reflect the final determination of the property owner's claim. The department shall change its valuation records accordingly.

E. Upon the final determination of the property owner's claim filed against the county assessor, the assessor shall send a copy of the final order to the county treasurer and to the director. The county assessor and the department shall change their respective valuation records to clearly reflect the final determination of the property owner's claim."

Section 2. APPLICABILITY.--The provisions of this act apply to property tax years beginning on or after January 1, 2003.

CHAPTER 293

CHAPTER 293, LAWS 2003

AN ACT

RELATING TO PROPERTY TAXATION; AMENDING THE DEVELOPMENT INCENTIVE ACT AUTHORIZING MUNICIPALITIES AND COUNTIES TO PROVIDE A PROPERTY TAX EXEMPTION FOR COMMERCIAL PERSONAL PROPERTY OF CERTAIN BUSINESS FACILITIES.

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

Section 1. Section 3-64-1 NMSA 1978 (being Laws 1991, Chapter 163, Section 1) is amended to read:

"3-64-1. SHORT TITLE.--Chapter 3, Article 64 NMSA 1978 may be cited as the "Community Development Incentive Act"."

Section 2. Section 3-64-2 NMSA 1978 (being Laws 1991, Chapter 163, Section 2) is amended to read:

"3-64-2. DEFINITIONS.--

A. As used in the Community Development Incentive Act:

(1) "commencement of commercial operations" occurs when the new business facility is first available for use by the taxpayer or first capable of being used by the taxpayer in the revenue-producing enterprise in which the taxpayer intends to use the new business facility;

(2) "facility" means any factory, mill, plant, refinery, warehouse, dairy, feedlot, building or complex of buildings located within the state, including the land on which the facility is located and all machinery, equipment and other real and tangible personal property located at or within the facility and used in connection with the operation of the facility;

(3) "new business facility" means a facility 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; if the taxpayer employs only a portion of the facility in the operation of a revenue-producing enterprise and leases another portion of the facility to another person or does not otherwise use such other portions in the operation of a revenue-producing enterprise, the portion employed by the taxpayer in the operation of a revenue-producing enterprise shall be considered a "new business facility" if the requirements of Subparagraphs (b), (c) and (d) of this paragraph are satisfied;

(b) the facility is acquired by or leased to the taxpayer on or after July 1, 2003; provided, 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) if the facility was acquired by the taxpayer from another person and the facility was employed, immediately prior to the transfer of title to the facility to the taxpayer or to the commencement of the term of the lease of the facility to the taxpayer, by any other person in the operation of a revenue-producing enterprise, the taxpayer does not continue the operation of the same or a substantially identical revenue-producing enterprise at the facility; and

(d) the facility is not a replacement business facility;

(4) "new business facility employee" means a person employed by the taxpayer in the operation of a new business facility during the taxable year for which the exemption authorized by Section 3-64-3 NMSA 1978 is granted; a person shall be considered to have been so employed if the person performs duties in connection with the operation of the new business facility on:

(a) a regular, full-time basis;

(b) a part-time basis if the person is customarily performing the described duties at least twenty hours per week throughout the taxable year; or

(c) a seasonal basis if the person performs the described duties for substantially all of the season customary for the position in which the person is employed.

The number of new business facility employees during any property tax year shall be determined by dividing by twelve the sum of the number of new business facility employees on the last business day of each month of that year. If the new business facility is in operation for less than the entire property tax year, the number of new business facility employees shall be determined by dividing the sum of the number of new business facility employees on the last business day of each full calendar month

during the portion of the property tax year during which the new business facility was in operation by the number of full calendar months during that period;

(5) "new business facility investment" means the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, that constitutes the new business facility or that is used by the taxpayer in the operation of the new business facility during the property tax year for which the exemption authorized by Section 3-64-3 NMSA 1978 is granted and the value of that property during the year shall be:

(a) its original cost if owned by the taxpayer; or

(b) eight times the net annual rental rate if leased by the taxpayer; the "net annual rental rate" is the annual rental rate paid by the taxpayer, less any annual rental rate received by the taxpayer from subrentals;

(6) "related taxpayer" means:

(a) a corporation, partnership, limited liability company, trust or association controlled by the taxpayer;

(b) an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer; or

(c) a corporation, limited liability company, partnership, trust or association controlled by an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer.

For the purposes of this paragraph, "control of a corporation" means ownership, directly or indirectly, of stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and at least eighty percent of all other classes of stock of the corporation; "control of a partnership, limited liability company or association" means ownership of at least eighty percent of the capital or profits interest in such partnership, limited liability company or association; and "control of a trust" means ownership, directly or indirectly, of at least eighty percent of the beneficial interest in the principal or income of the trust;

(7) "replacement business facility" means a facility as defined in Paragraph (3) of this subsection and referred to in this paragraph as a "new facility" that replaces another facility, referred to in this paragraph as an "old facility", located within the state in which the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first property tax year in which the exemption authorized by Section 3-64-3 NMSA 1978 is claimed; a new facility shall be deemed to replace an old facility if the following conditions are met:

(a) the old facility was operated by the taxpayer or a related taxpayer for more than three full property tax years out of the five property tax years next preceding the property tax year in which commencement of commercial operations occurs at the new facility; and

(b) the old facility was employed by the taxpayer or a related taxpayer in the operation of a revenue-producing enterprise and the taxpayer continues the operation of the same or a substantially identical revenue-producing enterprise at the new facility.

Notwithstanding the provisions of Subparagraph (a) of this paragraph, a facility shall not be considered a "replacement business facility" if the taxpayer's investment in the new facility exceeds three million dollars (\$3,000,000) or, if less, three hundred percent of the investment in the old facility by the taxpayer or related taxpayer. The investment in the new facility and in the old facility shall be determined in the manner provided in Paragraph (5) of this subsection;

(8) "revenue-producing enterprise" means:

(a) the production, assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(b) the storage, warehousing, distribution or sale of any products of agriculture, mining or manufacturing;

(c) the feeding of livestock at a feedlot;

(d) the operation of laboratories or other facilities for scientific, agricultural animal husbandry or industrial research development;

(e) the generation of electricity;

(f) the performance of services of any type;

(g) the administrative management of any of the activities listed in Subparagraphs (a) through (f) of this paragraph; or

(h) any combination of any of the activities referred to in Subparagraphs (a) through (g) of this paragraph; and

(9) "same or a substantially identical revenue-producing enterprise" means a revenue-producing enterprise in which the products produced or sold, the services performed or the activities conducted are the same in character and use and are produced, sold, performed or conducted in the same manner and to or for the same types of customers as the products, services or activities produced, sold, performed or conducted in another revenue-producing enterprise.

B. The new business facility investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the property tax year. If the new business facility is in operation for less than an entire property tax year, the new business facility investment shall be determined by dividing the sum of the total value of the property on the last business day of each full calendar month during the portion of the property tax year during which the new business facility was in operation by the number of full calendar months during that period.

C. If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility eligible for the exemption authorized by Section 3-64-3 NMSA 1978 if:

(1) the taxpayer's investment in the expansion exceeds one million dollars (\$1,000,000) or, if less, one hundred percent of its investment in the original facility prior to expansion; and

(2) the expansion otherwise constitutes a new business facility.

The taxpayer's investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in Paragraph (5) of Subsection A of this section.

D. If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility for purposes of the exemption granted by Section 3-64-3 NMSA 1978 if:

(1) the expansion results in the employment of ten or more new business facility employees over and above the average number of employees employed in the county or municipality granting the exemption by the taxpayer during the twelve months immediately prior to the expansion, computed pursuant to Paragraph (4) of Subsection A of this section; and

(2) the expansion otherwise constitutes a new business facility."

Section 3. Section 3-64-3 NMSA 1978 (being Laws 1991, Chapter 163, Section 3) is amended to read:

"3-64-3. EXEMPTION OF CERTAIN COMMERCIAL PERSONAL PROPERTY FROM PROPERTY TAX BY LOCAL BODIES.--

A. The governing body of a county or a municipality may by a majority vote of the members elected to the governing body adopt a resolution exempting commercial personal property of a new business facility located in the county or municipality from the imposition of any property tax on commercial personal property

authorized to be imposed by the respective governing body, subject to the limitations of Subsection B of this section.

B. The exemption authorized by Subsection A of this section may be for up to one hundred percent of the value for property taxation purposes of the property exempted.

C. The exemption authorized by Subsection A of this section may be for any period of time not to exceed twenty years. The effective date of any exemption shall be January 1 of the property tax year in which the new business facility commences commercial operations."

Section 4. Section 3-64-5 NMSA 1978 (being Laws 1991, Chapter 163, Section 5) is amended to read:

"3-64-5. EXPIRATION OF EXEMPTION--ACTION OF ASSESSOR.--An exemption granted under Section 3-64-3 NMSA 1978 shall automatically terminate on the last day of the property tax year in which it expires pursuant to the exemption resolution or on the last day of the property tax year in which a new business facility ceases commercial operations, whichever occurs first."

HOUSE BILL 659, AS AMENDED

CHAPTER 294

CHAPTER 294, LAWS 2003

AN ACT

RELATING TO ADOPTIONS; ESTABLISHING PROCEDURES FOR ADOPTIONS ENTERED INTO PURSUANT TO THE FEDERAL INTERCOUNTRY ADOPTION ACT; PROVIDING FOR BACKGROUND CHECKS ON PERSONS WHO PETITION TO ADOPT A CHILD; PROVIDING A PENALTY; AMENDING AND ENACTING SECTIONS OF THE ADOPTION ACT.

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

Section 1. Section 32A-5-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 128) is amended to read:

"32A-5-1. SHORT TITLE.--Chapter 32A, Article 5 NMSA 1978 may be cited as the "Adoption Act"."

Section 2. Section 32A-5-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 130, as amended) is amended to read:

"32A-5-3. DEFINITIONS.--As used in the Adoption Act:

A. "accrediting entity" means an entity that has entered into an agreement with the United States secretary of state pursuant to the federal Intercountry Adoption Act and regulations adopted by the United States secretary of state pursuant to that act, to accredit agencies and approve persons who provide adoption services related to convention adoptions;

B. "adoptee" means a person who is the subject of an adoption petition;

C. "adoption service" means:

(1) identifying a child for adoption and arranging the adoption of the child;

(2) securing termination of parental rights to a child or consent to adoption of the child;

(3) performing a background study on a child and reporting on the study;

(4) performing a home study on a prospective adoptive parent and reporting on the study;

(5) making determinations regarding the best interests of a child and the appropriateness of an adoptive placement for the child;

(6) performing post-placement monitoring of a child until an adoption is final; and

(7) when there is a disruption before an adoption of a child is final, assuming custody of the child and providing or facilitating the provision of child care or other social services for the child pending an alternative placement of the child;

D. "agency" means a person certified, licensed or otherwise specially empowered by law to place a child in a home in this or any other state for the purpose of adoption;

E. "agency adoption" means an adoption when the adoptee is in the custody of an agency prior to placement;

F. "acknowledged father" means a father who:

(1) acknowledges paternity of the adoptee pursuant to the putative father registry, as provided for in Section 32A-5-20 NMSA 1978;

(2) is named, with his consent, as the adoptee's father on the adoptee's birth certificate;

(3) is obligated to support the adoptee under a written voluntary promise or pursuant to a court order; or

(4) has openly held out the adoptee as his own child by establishing a custodial, personal or financial relationship with the adoptee as follows:

(a) for an adoptee under six months old at the time of placement: 1) has initiated an action to establish paternity; 2) is living with the adoptee at the time the adoption petition is filed; 3) has lived with the mother a minimum of ninety days during the two-hundred-eighty-day-period prior to the birth or placement of the adoptee; 4) has lived with the adoptee within the ninety days immediately preceding the adoptive placement; 5) has provided reasonable and fair financial support to the mother during the pregnancy and in connection with the adoptee's birth in accordance with his means and when not prevented from doing so by the person or authorized agency having lawful custody of the adoptee or the adoptee's mother; 6) has continuously paid child support to the mother since the adoptee's birth in an amount at least equal to the amount provided in Section 40-4-11.1 NMSA 1978, or has brought current any delinquent child support payments; or 7) any other factor the court deems necessary to establish a custodial, personal or financial relationship with the adoptee; or

(b) for an adoptee over six months old at the time of placement: 1) has initiated an action to establish paternity; 2) has lived with the adoptee within the ninety days immediately preceding the adoptive placement; 3) has continuously paid child support to the mother since the adoptee's birth in an amount at least equal to the amount provided in Section 40-4-11.1 NMSA 1978, or is making reasonable efforts to bring delinquent child support payments current; 4) has contact with the adoptee on a monthly basis when physically and financially able and when not prevented by the person or authorized agency having lawful custody of the adoptee; or 5) has regular communication with the adoptee, or with the person or agency having the care or custody of the adoptee, when physically and financially unable to visit the adoptee and when not prevented from doing so by the person or authorized agency having lawful custody of the adoptee;

G. "alleged father" means an individual whom the biological mother has identified as the biological father, but the individual has not acknowledged paternity or registered with the putative father registry as provided for in Section 32A-5-20 NMSA 1978;

H. "consent" means a document:

(1) signed by a biological parent whereby the parent grants consent to the adoption of the parent's child by another; or

(2) whereby the department or an agency grants its consent to the adoption of a child in its custody;

I. "convention adoption" means:

(1) an adoption by a United States resident of a child who is a resident of a foreign country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; or

(2) an adoption by a resident of a foreign country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of a child who is a resident of the United States;

J. "counselor" means a person certified by the department to conduct adoption counseling in independent adoptions;

K. "department adoption" means an adoption when the child is in the custody of the department;

L. "former parent" means a parent whose parental rights have been terminated or relinquished;

M. "full disclosure" means mandatory and continuous disclosure by the investigator, agency, department or petitioner throughout the adoption proceeding and after finalization of the adoption of all known, nonidentifying information regarding the adoptee, including:

(1) health history;

(2) psychological history;

(3) mental history;

(4) hospital history;

(5) medication history;

(6) genetic history;

(7) physical descriptions;

(8) social history;

(9) placement history; and

(10) education;

N. "independent adoption" means an adoption when the child is not in the custody of the department or an agency;

O. "investigator" means an individual certified by the department to conduct pre-placement studies and post-placement reports;

P. "office" means a place for the regular transaction of business or performance of particular services;

Q. "parental rights" means all rights of a parent with reference to a child, including parental right to control, to withhold consent to an adoption or to receive notice of a hearing on a petition for adoption;

R. "placement" means the selection of a family for an adoptee or matching of a family with an adoptee and physical transfer of the adoptee to the family in all adoption proceedings, except in adoptions filed pursuant to Paragraphs (1) and (2) of Subsection C of Section 32A-5-12 NMSA 1978, in which case placement occurs when the parents consent to the adoption, parental rights are terminated or parental consent is implied;

S. "post-placement report" means a written evaluation of the adoptive family and the adoptee after the adoptee is placed for adoption;

T. "pre-placement study" means a written evaluation of the adoptive family, the adoptee's biological family and the adoptee;

U. "presumed father" means:

(1) the husband of the biological mother at the time the adoptee was born;

(2) an individual who was married to the mother and either the adoptee was born during the term of the marriage or the adoptee was born within three hundred days after the marriage was terminated by death, annulment, declaration of invalidity or divorce; or

(3) before the adoptee's birth, an individual who attempted to marry the adoptee's biological mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid and if the attempted marriage:

(a) could be declared invalid only by a court, the adoptee was born during the attempted marriage or within three hundred days after its termination by death, annulment, declaration of invalidity or divorce; or

(b) is invalid without a court order, the adoptee was born within three hundred days after the termination of cohabitation;

V. "record" means any petition, affidavit, consent or relinquishment form, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, photograph, invoice, receipt, certificate or other printed, written, videotaped or tape-recorded material pertaining to an adoption proceeding;

W. "relinquishment" means the document by which a parent relinquishes parental rights to the department or an agency to enable placement of the parent's child for adoption;

X. "resident" means a person who, prior to filing an adoption petition, has lived in the state for at least six months immediately preceding filing of the petition for adoption or a person who has become domiciled in the state by establishing legal residence with the intention of maintaining the residency indefinitely; and

Y. "stepparent adoption" means an adoption of the adoptee by the adoptee's stepparent when the adoptee has lived with the stepparent for at least one year following the marriage of the stepparent to the custodial parent."

Section 3. Section 32A-5-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 133, as amended) is amended to read:

"32A-5-6. AUTHORITY OF THE DEPARTMENT.--

A. The department may adopt and promulgate necessary rules and forms for the administration of the Adoption Act, including rules for the assessment of fees. The rules shall not conflict with the provisions of the Adoption Act.

B. The department has the authority to provide or request additional information from an investigator or an attorney representing any person involved in any action filed pursuant to the provisions of the Adoption Act.

C. The department has the authority to intervene in any action filed pursuant to the provisions of the Adoption Act. The intervention shall be effected when legal counsel for the department files a motion for an entry of appearance and an appropriate response.

D. The department shall be served by mail by the attorney for the petitioner with copies of all pleadings filed in any action pursuant to the provisions of the

Adoption Act, except for copies of the petition for adoption, the request for placement and the decree of adoption, which shall be served as provided in Section 32A-5-7 NMSA 1978.

E. The department is authorized to act as an accrediting entity on behalf of the state.

F. The department may assess fees for the cost of accrediting an agency or approving a person in matters related to convention adoptions. The department shall establish the amount of the fees by rule and the fees shall be subject to approval by the United States secretary of state. The amount of the fees shall not exceed the cost of similar services provided by the department."

Section 4. Section 32A-5-26 NMSA 1978 (being Laws 1993, Chapter 77, Section 153, as amended) is amended to read:

"32A-5-26. PETITION--CONTENT.--A petition for adoption shall be filed and verified by the petitioner and shall allege:

A. the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage; the date and place of any prior marriage, separation or divorce; and the name of any present or prior spouse;

B. the date and place of birth of the adoptee, if known;

C. the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived, unless the adoptee is in the custody of an agency or the department, in which case the petitioner shall state the name and address of the agency or the department's county office from which the child was placed;

D. the birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name; provided that in the case of an agency adoption, if the petitioner and the biological parents have not agreed to the release of the adoptee's identity to the other person, the birth name and any other names by which the adoptee has been known shall be filed with the court as separate documents at the time the petition is filed;

E. where the adoptee is residing at the time of the filing of the petition and, if the adoptee is not living with the petitioner, when the adoptee will commence living with the petitioner;

F. that the petitioner desires to establish a parent and child relationship with the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

G. the existence of any court orders, including placement orders, that are known to the petitioner and that regulate custody, visitation or access to the adoptee, copies of which shall accompany and be attached to the petition as exhibits;

H. the relationship, if any, of the petitioner to the adoptee;

I. the name and address of the placing agency, if any;

J. the names and addresses of all persons from whom consents or relinquishments are required, attaching copies of those obtained and alleging the facts that excuse or imply the consents or relinquishments of the others; provided that if the petitioner has not agreed to the release of his identity to the parent or if the parent has not agreed to the release of his identity to the petitioner, the names and addresses of all persons from whom consents or relinquishments are required shall be filed with the court as separate documents at the time the petition for adoption is filed;

K. whether the adoption will be an open adoption, pursuant to the provisions of Section 32A-5-35 NMSA 1978;

L. when consent of the child's father is alleged to be unnecessary, the results of a search of the putative father registry;

M. whether the adoptee is an Indian child and, if so, the petition shall allege:

(1) the tribal affiliation of the adoptee's parents;

(2) what specific actions have been taken and by whom to notify the parents' tribe and the results of the contact, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribe shall be attached as exhibits to the petition; and

(3) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribe;

N. whether the adoption is subject to the Interstate Compact on the Placement of Children and, if so, a copy of the interstate compact form indicating approval shall be attached as an exhibit to the petition;

O. whether the adoptee is foreign-born and, if so, copies of the child's passport and United States visa and of all documents demonstrating that the adoptee is legally free for adoption, including a certificate from the United States secretary of state that certifies that the adoption is a convention adoption;

P. whether the adoption is a convention adoption and, if so, the petition shall allege:

(1) that the country in which the child has been residing is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;

(2) that the agency or person who is providing the adoption service has been approved as an accrediting entity; and

(3) that the certificate issued by the United States secretary of state that certifies the adoption as a convention adoption has been filed with the court; and

Q. the name, address and telephone number of the agency or individual who has agreed to conduct the post-placement report in accordance with Section 32A-5-31 NMSA 1978, if different than the agency or individual who prepared the pre-placement study in accordance with Section 32A-5-13 NMSA 1978."

Section 5. Section 32A-5-36 NMSA 1978 (being Laws 1993, Chapter 77, Section 163, as amended) is amended to read:

"32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF ADOPTION.--

A. The court shall conduct hearings on the petition for adoption so as to determine the rights of the parties in a manner that protects confidentiality. The petitioner and the adoptee shall attend the hearing unless the court for good cause waives a party's appearance. Good cause may include burdensome travel requirements.

B. The petitioner shall file all documents required pursuant to the Adoption Act and serve the department with copies of the documents simultaneously with the request for hearing on the petition for adoption.

C. If any person who claims to be the biological father of the adoptee has appeared before the court and filed a written petition or response seeking custody and assuming financial responsibility of the adoptee, the court shall hear evidence as to the merits of the petition. If the court determines by a preponderance of the evidence that the person is not the biological father of the adoptee or that the child was conceived through an act of rape or incest, the petition shall be dismissed and the person shall no longer be a party to the adoption. If the court determines that the person is the biological father of the adoptee, the court shall further determine whether the person qualifies as a presumed or acknowledged father whose consent is necessary for adoption, pursuant to Section 32A-5-17 NMSA 1978. If the court determines that the person is the biological father, but does not qualify as a presumed or acknowledged father, the court shall adjudicate the person's rights pursuant to the provisions of the Adoption Act.

D. If the mother or father of the adoptee has appeared before the court and filed a written petition that alleges the invalidity of the mother's or father's own consent or relinquishment for adoption previously filed in the adoption proceeding, the court shall hear evidence as to the merits of the petition. If the court determines that the allegations have not been proved by a preponderance of the evidence, the petition shall be dismissed. If the court determines that the allegations of the petition are true, the consent or relinquishment for adoption shall be held invalid, and the court shall determine, in the best interests of the adoptee, the person who shall have custody of the child.

E. The petitioner shall present and prove each allegation set forth in the petition for adoption by clear and convincing evidence.

F. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

(1) the court has jurisdiction to enter a decree of adoption affecting the adoptee;

(2) the adoptee has been placed with the petitioner for a period of ninety days if the adoptee is under the age of one year at the time of placement or for a period of one hundred eighty days if the adoptee is one year of age or older at the time of placement, unless, for good cause shown, the requirement is waived by the court;

(3) all necessary consents, relinquishments, terminations or waivers have been obtained;

(4) the post-placement report required by Section 32A-5-31 NMSA 1978 has been filed with the court;

(5) service of the petition for adoption has been made or dispensed with as to all persons entitled to notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

(6) at least ninety days have passed since the filing of the petition for adoption, except the court may shorten or waive this period of time in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to provisions of Section 32A-5-12 NMSA 1978;

(7) the petitioner is a suitable adoptive parent and the best interests of the adoptee are served by the adoption;

(8) if visitation between the biological family and the adoptee is contemplated, that the visitation is in the child's best interests;

(9) if the adoptee is foreign-born, the child is legally free for adoption and a certificate issued by the United States secretary of state that certifies the adoption as a convention adoption has been filed with the court;

(10) the results of the criminal records check required pursuant to provisions of the Adoption Act have been received and considered;

(11) if the adoptee is an Indian child, the requirements set forth in the federal Indian Child Welfare Act of 1978 have been met;

(12) when the child is an Indian child, the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes have been followed or, if not followed, good cause for noncompliance has been clearly stated and supported, as required by the federal Indian Child Welfare Act of 1978 and provision has been made to ensure that the Indian child's cultural ties to the Indian child's tribe are protected and fostered; and

(13) if the adoption involves the interstate placement of the adoptee, the requirements of the Interstate Compact on the Placement of Children have been met.

G. In addition to the findings required by Subsection F of this section, the court in any decree of adoption shall make findings with respect to each allegation of the petition.

H. If the court determines that any of the requirements for a decree of adoption pursuant to provisions of Subsections E and F of this section have not been met or that the adoption is not in the best interests of the adoptee, the court shall deny the petition and determine, in the best interests of the adoptee, the person who shall have custody of the child.

I. The decree of adoption shall include the new name of the adoptee and shall not include any other name by which the adoptee has been known or the names of the former parents. The decree of adoption shall order that from the date of the decree, the adoptee shall be the child of the petitioner and accorded the status set forth in Section 32A-5-37 NMSA 1978.

J. A decree of adoption shall be entered within six months of the filing of the petition if the adoptee is under the age of one year at the time of placement or twelve months if the adoptee is one year of age or older at the time of placement, except that the time may be extended by the court upon request of any of the parties or upon the court's own motion for good cause shown.

K. A decree of adoption may not be attacked upon the expiration of one year from the entry of the decree; provided, however, that in any adoption involving an Indian child, the Indian child's parent or Indian custodian may petition the court pursuant

to the provisions of the federal Indian Child Welfare Act of 1978 to invalidate the adoption.

L. In any adoption involving an Indian child, the clerk of the court shall provide the secretary of the interior with a copy of any decree of adoption or adoptive placement order and other information as required by the federal Indian Child Welfare Act of 1978."

Section 6. Section 32A-5-39 NMSA 1978 (being Laws 1993, Chapter 77, Section 166) is amended to read:

"32A-5-39. RECOGNITION OF FOREIGN DECREES.--

A. Every judgment terminating the parent-child relationship or establishing the relationship of parent and child by adoption issued pursuant to due process of law by the tribunals of any other jurisdiction within or without the United States shall be recognized in this state, so that the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the judgment were issued by the courts of this state.

B. A convention adoption in a foreign country that is certified by the United States secretary of state shall be recognized as a final adoption in this state."

Section 7. A new section of the Adoption Act is enacted to read:

"APPLICATION OF THE FEDERAL INTERCOUNTRY ADOPTION ACT.--The protections and requirements set forth in the federal Intercountry Adoption Act apply to all proceedings involving a convention adoption."

Section 8. A new section of the Adoption Act is enacted to read:

"CRIMINAL HISTORY RECORDS CHECK--BACKGROUND CHECKS.--

A. A nationwide criminal history records check shall be conducted on every person who files a petition to adopt a child. A person who files a petition to adopt a child shall provide the department with a set of fingerprints. The department is authorized to use the set of fingerprints to conduct a background check of the petitioner by submitting the fingerprints to the department of public safety and the federal bureau of investigation.

B. Criminal history records obtained by the department pursuant to the provisions of this section are confidential. Criminal history records obtained pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or

disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

C. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 736, AS AMENDED

CHAPTER 295

CHAPTER 295, LAWS 2003

AN ACT

RELATING TO TAXATION; AMENDING A SECTION OF THE CORPORATE INCOME AND FRANCHISE TAX ACT TO CHANGE CERTAIN PREREQUISITES FOR FILING ESTIMATED TAX PAYMENTS.

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

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 is five thousand dollars (\$5,000) or more in the current taxable year. 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;

(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 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; or

(4) estimating the amount of tax due, net of any credits, for each fiscal quarter of the current taxable year, provided that the estimated amount is at least eighty percent of the amount determined to be due for that quarter.

B. If Subsection A of this section applies, the amount of estimated tax shall be paid in installments as provided in this subsection. Twenty-five percent of the estimated tax calculated under Paragraph (1), (2) or (3) of Subsection A of this section or one hundred percent of the estimated tax calculated under Paragraph (4) of Subsection A of this section is due on or before the following dates: the fifteenth day of the sixth month of the taxable year, the fifteenth day of the ninth month of the taxable year and 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), (3) or (4) 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), (3) or (4) 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. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2003.

HOUSE BILL 762

CHAPTER 296

CHAPTER 296, LAWS 2003

AN ACT

RELATING TO CRIMINAL LAW; REVISING THE PENALTY FOR THE CRIMINAL OFFENSE KNOWN AS TAMPERING WITH EVIDENCE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 30-22-5 NMSA 1978 (being Laws 1963,

Chapter 303, Section 22-5) is amended to read:

"30-22-5. TAMPERING WITH EVIDENCE.--

A. Tampering with evidence consists of destroying, changing, hiding, placing or fabricating any physical evidence with intent to prevent the apprehension, prosecution or conviction of any person or to throw suspicion of the commission of a crime upon another.

B. Whoever commits tampering with evidence shall be punished as follows:

(1) if the highest crime for which tampering with evidence is committed is a capital or first degree felony or a second degree felony, the person committing tampering with evidence is guilty of a third degree felony;

(2) if the highest crime for which tampering with evidence is committed is a third degree felony or a fourth degree felony, the person committing tampering with evidence is guilty of a fourth degree felony;

(3) if the highest crime for which tampering with evidence is committed is a misdemeanor or a petty misdemeanor, the person committing tampering with evidence is guilty of a petty misdemeanor; and

(4) if the highest crime for which tampering with evidence is committed is indeterminate, the person committing tampering with evidence is guilty of a fourth degree felony."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 813, AS AMENDED

CHAPTER 297

CHAPTER 297, LAWS 2003

AN ACT

RELATING TO RADIATION PROTECTION; PROVIDING THE SECRETARY OF ENVIRONMENT WITH AUTHORITY TO ENFORCE ORDERS; PROVIDING CIVIL AND CRIMINAL PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE RADIATION PROTECTION ACT.

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

Section 1. Section 74-3-1 NMSA 1978 (being Laws 1971, Chapter 284, Section 1, as amended) is amended to read:

"74-3-1. SHORT TITLE.--Chapter 74, Article 3 NMSA 1978 may be cited as the "Radiation Protection Act"."

Section 2. Section 74-3-4 NMSA 1978 (being Laws 1971, Chapter 284, Section 4, as amended) is amended to read:

"74-3-4. DEFINITIONS.--As used in the Radiation Protection Act:

A. "board" means the environmental improvement board;

B. "agency" or "division" means the environmental protection division of the department of environment;

C. "council" means the radiation technical advisory council;

D. "radiation" includes particulate and electromagnetic radiation and ultrasound, but does not include audible sound;

E. "radioactive material" includes any materials or sources, regardless of chemical or physical state, that emit radiation;

F. "radiation equipment" means any device that is capable of producing radiation;

G. "agreement state" means any state with which the nuclear regulatory commission has entered into an agreement under Section 274(b) of the federal Atomic Energy Act of 1954, as amended;

H. "person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or its legal representatives, agents or assigns;

I. "continued care fund" means the radiation protection continued care fund;

J. "director" means the director of the division;

K. "nuclear regulatory commission" means the United States nuclear regulatory commission; and

L. "secretary" means the secretary of environment."

Section 3. A new section of the Radiation Protection Act is enacted to read:

"EMERGENCY POWERS OF THE SECRETARY.--

A. Notwithstanding any other provision of the Radiation Protection Act, if the secretary determines that a person is violating a condition of a license or registration issued by the agency, or administered by the agency pursuant to an agreement with the nuclear regulatory commission, or any regulation promulgated pursuant to the Radiation Protection Act, and determines that the violation may present an imminent and substantial endangerment to human health or safety, the secretary may bring suit to immediately restrain the person from the violation or take such other action as may be necessary or both. The secretary may also take other action, including issuing orders as may be necessary to protect human health and safety. The order shall be effective immediately; however, the person named in the order may request an administrative hearing before the secretary within ten days after the order is served. If a timely request

for a hearing is made, the secretary shall hold the hearing within thirty days. The secretary may commence an action in the appropriate district court to enforce an order.

B. A person who willfully violates an order of the secretary pursuant to Subsection A of this section may be fined not more than fifteen thousand dollars (\$15,000) per day for each violation of the order."

Section 4. A new section of the Radiation Protection Act is enacted to read:

"ENFORCEMENT--COMPLIANCE ORDERS--CIVIL PENALTIES.--

A. When, on the basis of any information, the secretary determines that a person has violated or is violating a requirement or prohibition set forth in the Radiation Protection Act, a regulation promulgated pursuant to that act or a condition of a license or registration issued pursuant to that act, the secretary may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period, or assessing a civil penalty for a past or current violation, or both. The secretary may commence an action in the appropriate district court to enforce an order; or

(2) commence a civil action in district court for appropriate relief, including injunctive relief.

B. An order issued pursuant to Subsection A of this section may include a suspension or revocation of a license or registration, or portion thereof, issued by the secretary. A penalty assessed in the order shall not exceed fifteen thousand dollars (\$15,000) per day for each violation in the order. If a person named in an order fails to comply with the order, the secretary may assess a civil penalty in an amount not to exceed fifteen thousand dollars (\$15,000) per day for each violation of the order.

C. In determining the amount of a penalty to be assessed pursuant to this section, the secretary shall take into account the seriousness of the violation, any good-faith efforts to comply with the applicable requirements and any other relevant factors.

D. An order issued pursuant to the provisions of Subsection A of 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 public hearing. The secretary shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward a recommendation based on the proceedings to the secretary. The secretary shall make a final decision.

E. 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. The secretary may also adopt rules for discovery procedures.

F. Penalties collected pursuant to an administrative order issued pursuant to this section shall be deposited in the state general fund."

Section 5. A new section of the Radiation Protection Act is enacted to read:

"ADMINISTRATIVE ACTIONS--APPEALS.--

A. A person who is adversely affected by a final administrative action of the secretary may appeal to the court of appeals for further relief within thirty days after the action. All appeals shall be on the administrative record developed by the secretary.

B. Upon appeal, the court of appeals shall set aside the action 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.

C. A stay of enforcement of the action being appealed may be granted after hearing and upon good cause shown:

- (1) by the secretary; or
- (2) by the court of appeals if the secretary denies a stay or fails to act upon an application for a stay within sixty days after receipt."

Section 6. A new section of the Radiation Protection Act is enacted to read:

"CRIMINAL PENALTIES.--

A. A person who knowingly commits a violation of the Radiation Protection Act or a regulation promulgated pursuant to that act is guilty of a misdemeanor and upon conviction shall be sentenced to a term of imprisonment not to exceed three hundred sixty-four days or the payment of a fine not to exceed ten thousand dollars (\$10,000), or both.

B. A person who knowingly makes a false statement, representation or certification in an application, record, report, plan or other document filed or required to

be maintained pursuant to the Radiation Protection Act or any regulation promulgated pursuant to that act is guilty of a petty misdemeanor and upon conviction shall be sentenced to a term of imprisonment not to exceed six months or the payment of a fine not to exceed ten thousand dollars (\$10,000), or both."

Section 7. REPEAL.--Sections 74-3-11 and 74-3-12 NMSA 1978 (being Laws 1971, Chapter 284, Section 9 and Laws 1977, Chapter 343, Section 12, as amended) are repealed.

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 849, AS AMENDED

CHAPTER 298

CHAPTER 298, LAWS 2003

AN ACT

RELATING TO WATER; PROVIDING FOR PERMITTING OF DOMESTIC WELLS, LIVESTOCK WELLS AND TEMPORARY WELLS.

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

Section 1. Section 72-12-1 NMSA 1978 (being Laws 1931, Chapter 131, Section 1, as amended) is amended to read:

"72-12-1. UNDERGROUND WATERS DECLARED TO BE PUBLIC--APPLICATIONS FOR LIVESTOCK WATERING, DOMESTIC AND TEMPORARY USES OF WATER.--The water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, is declared to belong to the public and is subject to appropriation for beneficial use. By reason of the varying amounts and time such water is used and the relatively small amounts of water consumed in the watering of livestock; in irrigation of not to exceed one acre of noncommercial trees, lawn or garden; in household or other domestic use; and in prospecting, mining or construction of public works, highways and roads or drilling operations designed to discover or develop the natural resources of the state, application for any such use shall be governed by the provisions of Sections 72-12-1.1 through 72-12-1.3 NMSA 1978."

Section 2. A new Section 72-12-1.1 NMSA 1978 is enacted to read:

"72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--A person, firm or corporation desiring to use public underground waters described in this section for irrigation of not to exceed one acre of noncommercial trees, lawn or garden or for household or other domestic use shall make application to the state engineer for a well on a form to be prescribed by the state engineer. Upon the filing of each application describing the use applied for, the state engineer shall issue a permit to the applicant to use the underground waters applied for; provided that permits for domestic water use within municipalities shall be conditioned to require the permittee to comply with all applicable municipal ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978."

Section 3. A new Section 72-12-1.2 NMSA 1978 is enacted to read:

"72-12-1.2. UNDERGROUND PUBLIC WATERS--LIVESTOCK WELL PERMITS.--A person, firm or corporation desiring to use public underground waters for watering livestock shall make an application to the state engineer on a form prescribed by the state engineer for a livestock well permit. Upon filing of the application, the state engineer shall issue a livestock well permit for the use of water for watering livestock to the applicant, provided that as part of an application for livestock watering use on state or federal land, the applicant submits proof that the applicant:

A. is legally entitled to place livestock on the state or federal land where the water is to be used; and

B. has been granted access to the drilling site and has permission to occupy the portion of the state or federal land as is necessary to drill and operate the well."

Section 4. A new Section 72-12-1.3 NMSA 1978 is enacted to read:

"72-12-1.3. UNDERGROUND PUBLIC WATERS--TEMPORARY USES.--If a person, firm, corporation or the state desires to use underground public water in an amount not to exceed three acre-feet for a definite period of not to exceed one year in prospecting, mining or construction of public works, highways and roads or drilling operations designed to discover or develop the natural mineral resources of the state, only the application referred to in Section 72-12-3 NMSA 1978 shall be required. Separate application shall be made for each proposed use, whether in the same or in different basins. Upon the filing of an application, the state engineer shall make an examination of the facts and, if the proposed use will not permanently impair any existing rights of others, the state engineer shall grant the application. If the state engineer finds that the proposed use sought will permanently impair such rights, there shall be advertisement and hearing as provided in the case of applications made under Section 72-12-3 NMSA 1978."

RESOURCES COMMITTEE SUBSTITUTE

FOR HOUSE BILL 976, AS AMENDED

CHAPTER 299

CHAPTER 299, LAWS 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CREATING THE TOURISM ENTERPRISE FUND; PROVIDING FOR ADMINISTRATION OF THE FUND.

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

Section 1. TOURISM REVENUE ENTERPRISE FUND CREATED-- FUND ADMINISTRATION.--

A. The "tourism enterprise fund" is created in the state treasury. Money appropriated to the fund or accruing to it through sales of souvenirs and sundries at visitors centers, web-site-related sales, television special program rights, gifts, grants, fees, penalties, bequests or any other source shall be delivered to the state treasurer and deposited in the fund. Money in the fund is appropriated to the tourism department for the purpose of carrying out the duties of the department. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. The fund shall be administered by the tourism department. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of tourism.

HOUSE BUSINESS AND INDUSTRY

COMMITTEE SUBSTITUTE FOR

HOUSE BILL 1005, AS AMENDED

CHAPTER 300

CHAPTER 300, LAWS 2003

AN ACT

RELATING TO ELECTIONS; ALLOWING A MAJOR POLITICAL PARTY TO SELECT DELEGATES TO ITS NATIONAL CONVENTION BY PARTY-ESTABLISHED PROCEDURES OR BY PRESIDENTIAL PRIMARY; AMENDING AND ENACTING SECTIONS OF THE ELECTION CODE.

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

Section 1. Section 1-8-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 151, as amended) is amended to read:

"1-8-1. NOMINATING PROCEDURES--MAJOR POLITICAL PARTIES--MINOR POLITICAL PARTIES.--

A. Any major political party in New Mexico, as defined in Section 1-1-9 NMSA 1978, shall nominate its candidates, other than its presidential candidates, by secret ballot at the next succeeding primary election as prescribed in the Primary Election Law.

B. Any minor political party in New Mexico, as defined in Section 1-1-9 NMSA 1978, shall nominate candidates for public office in the manner prescribed in its party rules and regulations and according to the provisions of the Election Code."

Section 2. Section 1-8-54 NMSA 1978 (being Laws 1977, Chapter 230, Section 2) is amended to read:

"1-8-54. PRESIDENTIAL PRIMARY--DATE OF ELECTION.--In the year in which the president and vice president of the United States are to be elected, the registered voters of this state shall be given an opportunity to express their preference for the person to be the presidential candidate of their party in either a presidential primary election or in accordance with the selection procedure for presidential candidates of each voter's party. The presidential primary election shall be held on the same date as the primary election is held in this state."

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

"SELECTION OF NATIONAL CONVENTION DELEGATES BY MAJOR POLITICAL PARTIES--CERTIFICATION.--

A. If a major political party chooses not to participate in the presidential primary, it shall notify the secretary of state at least thirty days before the governor is required to issue the proclamation of the primary election.

B. The state chairman of a major political party that does not participate in the presidential primary shall certify to the secretary of state the names of the state

party's delegates to the party's national convention and those delegates shall file a declaration of acceptance in accordance with Section 1-8-61 NMSA 1978."

Section 4. Section 1-8-61 NMSA 1978 (being Laws 1977, Chapter 230, Section 9, as amended by Laws 1980, Chapter 13, Section 5 and also by Laws 1980, Chapter 43, Section 5) is amended to read:

"1-8-61. DELEGATE PLEDGE.--

A. No person selected as a delegate or alternate shall qualify to attend the national convention of his political party unless he files with the state chairman of his political party at least fifteen days prior to the convening of the applicable national party convention a written declaration of acceptance, signed by himself, in the form herein prescribed and the state chairman deposits this declaration of acceptance in the office of the secretary of state no later than ten days before convening of the applicable national convention.

B. The declaration of acceptance shall be in the form of an affidavit and shall contain the following information:

(1) the name, residence and post office address of the delegate or alternate delegate;

(2) a statement that he is a registered voter in New Mexico affiliated with the political party for which he is a delegate or alternate and that he was a registered voter and affiliated with that party on the day of the governor's primary election proclamation in the year in which he is a delegate to the national convention;

(3) a statement that he accepts his selection as a delegate or alternate to the national convention; and

(4) if delegates are pledged to specific candidates for the office of president, a pledge in the following form:

"As a delegate to the 20 _____ national convention of _____ party, I pledge myself to vote on the first ballot for the nomination of president by the _____ party as required by Section 1-8-60 NMSA 1978."

C. Any delegate representing the uncommitted category may vote for any candidate at the national convention or remain uncommitted."

CHAPTER 301

CHAPTER 301, LAWS 2003

AN ACT

RELATING TO GAME AND FISH; PROVIDING THAT ARTIFICIAL WILDLIFE MAY BE USED FOR PROSECUTION OF VIOLATIONS OF THE HUNTING OF GAME ANIMALS OR BIRDS; PROVIDING PENALTIES; ENACTING A NEW SECTION OF CHAPTER 17 NMSA 1978.

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

Section 1. A new section of Chapter 17 NMSA 1978 is enacted to read:

"ARTIFICIAL WILDLIFE.--

A. Artificial wildlife may be used, and defined as game animals or birds, for the purpose of prosecution pursuant to Section 17-2-31 or 17-3-1 NMSA 1978, or for prosecution for shooting at, from or across a roadway.

B. Violations of shooting artificial wildlife shall be punished pursuant to the applicable penalty provisions of Chapter 17 NMSA 1978."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE JUDICIARY COMMITTEE

SUBSTITUTE FOR SENATE BILL 59

CHAPTER 302

CHAPTER 302, LAWS 2003

AN ACT

RELATING TO ANESTHESIOLOGY; CHANGING A DEFINITION; CHANGING THE SCOPE OF AUTHORITY OF ANESTHESIOLOGIST ASSISTANTS; CHANGING THE NUMBER OF ANESTHESIOLOGIST ASSISTANTS A SUPERVISING

ANESTHESIOLOGIST MAY SUPERVISE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 61-6-10.2 NMSA 1978 (being Laws 2001, Chapter 311, Section 2) is amended to read:

"61-6-10.2. DEFINITIONS.--As used in the Anesthesiologist Assistants Act:

A. "anesthesiologist" means a physician licensed to practice medicine in New Mexico who has successfully completed an accredited anesthesiology graduate medical education program, who is board certified by the American board of anesthesiology or board eligible, who has completed a residency in anesthesiology within the last three years or who has foreign certification determined by the board to be the substantial equivalent and who is an employee of the department of anesthesiology of a medical school in New Mexico;

B. "anesthesiologist assistant" means a skilled person employed or to be employed by a university in New Mexico with a medical school certified by the board as being qualified by academic and practical training to assist an anesthesiologist in developing and implementing anesthesia care plans for patients under the supervision and direction of the anesthesiologist who is responsible for the performance of that anesthesiologist assistant;

C. "applicant" means a person who is applying to the board for a license as an anesthesiologist assistant;

D. "board" means the New Mexico board of medical examiners; and

E. "license" means an authorization to practice as an anesthesiologist assistant."

Section 2. Section 61-6-10.3 NMSA 1978 (being Laws 2001, Chapter 311, Section 3) is amended to read:

"61-6-10.3. LICENSURE--REGISTRATION--ANESTHESIOLOGIST ASSISTANT--SCOPE OF AUTHORITY.--

A. The board may license qualified persons as anesthesiologist assistants.

B. A person shall not perform, attempt to perform or hold himself out as an anesthesiologist assistant until he is licensed by the board as an anesthesiologist assistant and has registered his supervising licensed anesthesiologist in accordance with board regulations.

C. An anesthesiologist assistant may assist the supervising anesthesiologist in developing and implementing an anesthesia care plan for a patient. In providing assistance to the supervising anesthesiologist, an anesthesiologist assistant may do any of the following:

(1) obtain a comprehensive patient history and perform a physical exam and present the history and exam findings to the supervising anesthesiologist who must conduct a pre-anesthetic interview and evaluation;

(2) pretest and calibrate anesthesia delivery systems;

(3) monitor, obtain and interpret information from anesthesia delivery systems and anesthesia monitoring equipment;

(4) assist the supervising anesthesiologist with the implementation of medically accepted monitoring techniques;

(5) establish basic and advanced airway interventions, including intubation of the trachea and performing ventilatory support;

(6) administer intermittent vasoactive drugs;

(7) start and adjust vasoactive infusions;

(8) administer anesthetic drugs, adjuvant drugs and accessory drugs;

(9) assist the supervising anesthesiologist with the performance of epidural anesthetic procedures and spinal anesthetic procedures;

(10) administer blood, blood products and supportive fluids;

(11) participate in administrative activities and clinical teaching activities;

(12) participate in research activities by performing the same procedures that may be performed under Paragraphs (1) through (10) of this subsection; and

(13) provide assistance to cardiopulmonary resuscitation teams in response to life-threatening situations.

D. An applicant shall complete an application form provided by the board and shall submit the completed form with the application fee to the board."

Section 3. Section 61-6-10.9 NMSA 1978 (being Laws 2001, Chapter 311, Section 9) is amended to read:

"61-6-10.9. RULES.--

A. The board may adopt and enforce reasonable rules:

(1) for setting qualifications of education, skill and experience for licensure of a person as an anesthesiologist assistant;

(2) for providing procedures and forms for licensure and annual registration;

(3) for examining and evaluating applicants for licensure as an anesthesiologist assistant regarding the required skill, knowledge and experience in developing and implementing anesthesia care plans under supervision;

(4) for allowing a supervising anesthesiologist to temporarily delegate his supervisory responsibilities for an anesthesiologist assistant to another anesthesiologist;

(5) for allowing an anesthesiologist assistant to temporarily serve under the supervision of an anesthesiologist other than the supervising anesthesiologist with whom the anesthesiologist assistant is registered; and

(6) to carry out the provisions of the Anesthesiologist Assistants Act.

B. The board shall not adopt a rule allowing an anesthesiologist assistant to perform procedures outside the anesthesiologist assistant's scope of practice.

C. The board shall adopt rules:

(1) establishing requirements for anesthesiologist assistant licensing, including:

(a) completion of a graduate level training program accredited by the commission on accreditation of allied health education programs;

(b) successful completion of a certifying examination for anesthesiologist assistants administered by the national commission for the certification of anesthesiologist assistants; and

(c) current certification by the American heart association in advanced cardiac life-support techniques;

(2) establishing minimum requirements for continuing education of not less than forty hours every two years;

(3) requiring adequate identification of the anesthesiologist assistant to patients and others;

(4) requiring the presence, except in cases of emergency, and the documentation of the presence, of the supervising anesthesiologist in the operating room during induction of a general or regional anesthetic and during emergence from a general anesthetic, the presence of the supervising anesthesiologist within the operating suite and immediate availability to the operating room at other times when the anesthetic procedure is being performed and requiring that the anesthesiologist assistant comply with the above restrictions;

(5) requiring the supervising anesthesiologist to ensure that all activities, functions, services and treatment measures are properly documented in written form by the anesthesiologist assistant. The anesthesia record shall be reviewed, countersigned and dated by the supervising anesthesiologist;

(6) requiring the anesthesiologist assistant to inform the supervising anesthesiologist of serious adverse events;

(7) establishing the number of anesthesiologist assistants a supervising anesthesiologist may supervise at one time, which number, except in emergency cases, shall not exceed three. An anesthesiologist shall not supervise, except in emergency cases, more than four anesthesia providers if at least one anesthesia provider is an anesthesiologist assistant; and

(8) within twelve months of the date on which the Anesthesiologist Assistants Act becomes effective, providing for enhanced supervision at the commencement of an anesthesiologist assistant's practice."

SENATE BILL 73, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 303

CHAPTER 303, LAWS 2003

AN ACT

RELATING TO FIRE PREVENTION; CREATING THE FIRE PLANNING TASK FORCE TO WORK WITH LOCAL GOVERNMENTS IN DEVELOPING MINIMUM STANDARDS

FOR BUILDING CODES AND ORDINANCES THAT WILL REDUCE THE THREAT OF FOREST FIRES.

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

Section 1. FIRE PLANNING TASK FORCE--DUTIES.--

A. The "fire planning task force" is created. The task force shall consist of twelve members as follows:

- (1) the state fire marshal;
- (2) the director of the local government division of the department of finance and administration;
- (3) a representative of the commissioner of public lands;
- (4) a representative of the federal bureau of land management on behalf of the United States department of the interior, appointed by the governor after consulting with the department of the interior;
- (5) a representative of the United States forest service, appointed by the governor, after consulting with the forest service;
- (6) a member of a local fire department, appointed by the governor;
- (7) a member of a volunteer fire department;
- (8) a representative of the New Mexico association of counties;
- (9) a representative of the New Mexico municipal league;
- (10) the director of the construction industries division of the regulation and licensing department;
- (11) the state forester; and
- (12) a representative of an Indian nation, tribe or pueblo, appointed by the governor.

B. The chair of the task force shall be elected by the task force. The task force shall meet at the call of the chair.

C. The public members of the task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

D. The forestry division of the energy, minerals and natural resources department, with assistance from the department of finance and administration, shall provide staff for the task force.

E. The task force shall:

(1) identify those areas within the state that, because of the interface between forests and urban buildings, are the most vulnerable to danger from forest fires;

(2) develop standards for building codes and ordinances that will reduce the threat of forest fires. In developing the standards, the task force shall:

(a) recognize the distinction between altering existing situations and establishing standards for new construction;

(b) consider the benefits of thinning overgrown forests, conducting controlled burns, clearing spaces around homes and other structures, using noncombustible roofing materials and double-pane windows and taking other fire suppression or prevention measures;

(c) consider the impact of fire mitigation measures on wildlife; and

(d) solicit comments from affected landowners, land users and local governments;

(3) work with communities in the affected areas in adopting and implementing the building codes and ordinances; and

(4) report its progress and any recommendations for legislation to the governor and the legislature by December 15 of each year.

SENATE BILL 148, AS AMENDED

CHAPTER 304

CHAPTER 304, LAWS 2003

AN ACT

RELATING TO REAL ESTATE; EXPANDING INVESTMENT POSSIBILITIES FOR A CERTAIN CAPITAL FUND IN THE LAND TITLE TRUST FUND; PROVIDING CERTAIN

POWERS TO THE NEW MEXICO MORTGAGE FINANCE AUTHORITY; PROVIDING FOR A SCHOLARSHIP PROGRAM.

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

Section 1. Section 58-18-5 NMSA 1978 (being Laws 1975, Chapter 303, Section 5, as amended) is amended to read:

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

- A. to sue and be sued;
- B. to have a seal and alter it at pleasure;
- C. to make and alter bylaws for its organization and internal management;
- D. to appoint other officers, agents and employees, prescribe their duties and qualifications and fix their compensation;
- E. to acquire, hold, improve, mortgage, lease and dispose of real and personal property for its public purposes;
- F. subject to the provisions of Section 58-18-6 NMSA 1978, to make loans, and contract to make loans, to mortgage lenders;
- G. subject to the provisions of Section 58-18-7 NMSA 1978, to purchase, and contract to purchase, mortgage loans from mortgage lenders;
- H. to procure or require the procurement of a policy of group or individual life insurance or disability insurance or both to insure repayment of mortgage loans in event of the death or disability of the borrower and to pay any premiums for the policy;
- I. to procure insurance against any loss in connection with its operations, including without limitation the repayment of any mortgage loan, in amounts and from insurers, including the federal government, that the authority deems necessary or desirable; to procure liability insurance covering its members, officers and employees for acts performed within the scope of their authority as members, officers or employees; and to pay any premiums for insurance procured;
- J. subject to any agreement with bondholders or noteholders:
 - (1) to renegotiate any mortgage loan or any loan to a mortgage lender in default;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

T. to employ architects, engineers, attorneys (other than and in addition to the attorney general of the state), accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix and pay their compensation;

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

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

W. subject to any agreement with bondholders and noteholders, to make, alter or repeal, subject to prior approval by the Mortgage Finance Authority Act oversight committee, hereby created, to be composed of four members appointed by

the president pro tempore of the senate and four members appointed by the speaker of the house of representatives, such rules and regulations with respect to its operations, properties and facilities as are necessary to carry out its functions and duties in the administration of the Mortgage Finance Authority Act;

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

Y. to act as trustee and administer the land title trust fund created pursuant to Section 58-28-3 NMSA 1978;

Z. to act as trustee and administrator pursuant to the Low-Income Housing Trust Act; and

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

Section 2. Section 58-18B-3 NMSA 1978 (being Laws 1994, Chapter 146, Section 3, as amended) 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 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 a 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) an individual who is a displaced homemaker or a single parent;

F. "fund" means the land title trust fund created pursuant to the provisions of the Land Title Trust Fund 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;

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; and

J. "trustee" means the New Mexico mortgage finance authority."

Section 3. Section 58-18B-5 NMSA 1978 (being Laws 1994, Chapter 146, Section 10, as amended) is amended to read:

"58-18B-5. TRUST ACCOUNTS--ESCROW ACCOUNTS--SPECIAL ACCOUNTS--POOLED INTEREST-BEARING ACCOUNTS--DISPOSITION OF EARNED INTEREST ON CERTAIN ACCOUNTS.--

A. Every real estate broker who maintains a trust or escrow account as required pursuant to the provisions of Paragraph (8) of Subsection A of Section 61-29-12 NMSA 1978 may maintain a pooled interest-bearing escrow account and may deposit all customer funds into that account except for:

(1) funds required to be deposited into a property management trust account under an express property management agreement; or

(2) funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

B. Every escrow closing agent that maintains a trust account or escrow account pursuant to the provisions of Section 58-22-20 NMSA 1978 shall maintain a pooled interest-bearing escrow account and shall deposit all customer funds into that account, except for funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

C. The interest earned on customer funds deposited in a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section, net of any appropriate financial institution service charges and fees, shall be remitted monthly or quarterly from the financial institution in which the account is maintained to the fund. The account agreement between the depositor and the financial institution shall expressly provide for the required remittance of interest.

D. The provisions of this section do not relieve a real estate broker or escrow closing agent from any obligations under other laws to safeguard and account for funds in a pooled interest-bearing account.

E. The pooled interest-bearing escrow accounts authorized to be established pursuant to the provisions of this section shall be interest-bearing demand accounts from which withdrawals and transfers can be made without delay, subject only to any notice period the depository institution is required to observe by law or rule.

F. The trustee shall adopt rules to carry out the provisions of the Low-Income Housing Trust Act.

G. A person establishing and maintaining a pooled interest-bearing escrow account required by the provisions of Subsection A or B of this section is not required to make disclosure to a person whose funds are placed in the account of the disposition of interest earned on the account.

H. An escrow servicing agent shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section.

I. A property manager shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section.

J. Real estate brokers and escrow closing agents shall enroll and instruct participating financial institutions on how to establish a pooled interest-bearing escrow account and how to authorize remittance of accrued interest less service charges to the fund.

K. A real estate broker or an escrow closing agent shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section if no financial institution in the community where the broker or agent maintains his principal place of business provides or offers that type of account."

Section 4. Section 58-28-4 NMSA 1978 (being Laws 1997, Chapter 118, Section 4, as amended) is amended to read:

"58-28-4. 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 rule.

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 rule.

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 trustee shall adopt and promulgate rules regarding the obligations of depository institutions pursuant to the provisions of the Land Title Trust Fund Act and the Low-Income Housing Trust Act."

Section 5. Section 58-28-5 NMSA 1978 (being Laws 1997, Chapter 118, Section 5) is amended to read:

"58-28-5. USE OF MONEY--ELIGIBLE ACTIVITIES.--

A. 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:

(1) no more than five percent of the fund shall be used for expenses of administering the fund;

(2) 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;

(3) no less than fifty percent of the fund shall be allocated to eligible organizations to make housing more accessible to low-income persons;

(4) no more than ten percent of the fund may be allotted for use to provide scholarships for New Mexico high school graduates and general equivalency diploma recipients at New Mexico public post-secondary educational institutions under a program approved by the trustee under the administration of a nonprofit statewide land title association; and

(5) 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.

B. Money in the capital fund authorized in Paragraph (2) of Subsection A of this section may be invested in fully amortizing interest-bearing mortgages secured by real property in New Mexico, the interest on which may be used for purposes specified in this section."

SENATE CORPORATIONS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR SENATE BILL 153,
WITH CERTIFICATE OF CORRECTION

CHAPTER 305

CHAPTER 305, LAWS 2003

AN ACT

RELATING TO SURETYSHIP; PROHIBITING DIRECTED SURETYSHIP;
PRESCRIBING A PENALTY.

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

Section 1. DIRECTED SURETYSHIP PROHIBITED--PENALTY.--

A. Except to the extent necessary to ensure that a surety company meets the requirements of Subsection A of Section 13-4-18 NMSA 1978, an employee of the state or its political subdivisions, or a person acting or purporting to act on behalf of that employee, shall not require a bidder or an offeror in a procurement for a construction contract pursuant to the Procurement Code to make application or furnish financial data for a surety bond or to obtain a surety bond from a particular surety company, insurance company, broker or agent in connection with the bid or proposal.

B. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

SENATE BILL 180, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 306

CHAPTER 306, LAWS 2003

AN ACT

RELATING TO INSURANCE; AMENDING THE NEW MEXICO INSURANCE CODE TO
CHANGE CERTAIN LICENSE FEES AND TO PROVIDE FOR NOTICE OF CHANGE

OF ADDRESS; PERMITTING SURCHARGE PROCEEDS TO BE APPROPRIATED FOR CERTAIN ACTIVITIES; PROVIDING PENALTIES.

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

Section 1. Section 59A-6-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 101, as amended) is amended to read:

"59A-6-1. FEE SCHEDULE.--The superintendent shall collect the following fees:

A. insurer's certificate of authority -

(1) filing application for certificate of authority, and issuance of certificate of authority, if issued, including filing of all charter documents, financial statements, service of process, power of attorney, examination reports and other documents included with and part of the application \$1,000.00

(2) annual continuation of certificate of authority, per kind of insurance, each year

continued 200.00

(3) reinstatement of certificate of authority (Section 59A-5-23 NMSA 1978) 150.00

(4) amendment to certificate of authority 200.00

B. charter documents - filing amendment to any charter document (as defined in Section 59A-5-3

NMSA 1978) 10.00

C. annual statement of insurer, filing 200.00

D. service of process, acceptance by superintendent and issuance of certificate of service, where issued 10.00

E. agents' licenses and appointments -

(1) filing application for original agent license and issuance of license, if issued 30.00

(2) appointment of agent -

20.00 (a) filing appointment, per kind of insurance, each insurer

continued 20.00 (b) continuation of appointment, each insurer, each year

(3) variable annuity agent's license -

issued 30.00 (a) filing application for license and issuance of license, if

(b) continuation of appointment each year 20.00

(4) temporary license as to life and health insurance or both 30.00

(a) as to property insurance 30.00

(b) as to casualty/surety

insurance 30.00

(c) as to vehicle insurance 30.00

F. solicitor license -

issued 30.00 (1) filing application for original license and issuance of license, if

20.00 (2) continuation of appointment, per kind of insurance, each year

G. broker license -

issued 30.00 (1) filing application for license and issuance of original license, if

(2) annual continuation of license 30.00

H. insurance vending machine license -

issued, each machine 25.00 (1) filing application for original license and issuance of license, if

(2) annual continuation of license, each machine 25.00

I. examination for license, application for examination conducted directly by superintendent, each grouping of kinds of insurance to be covered by the examination as provided by the superintendent's rules, and payable as to each instance of examination 50.00

J. surplus line insurer - filing application for qualification as eligible surplus lines insurer 1,000.00

K. surplus line broker license -

issued (1) filing application for original license and issuance of license, if 100.00

(2) annual continuation of license 100.00

L. adjuster license -

issued (1) filing application for original license and issuance of license, if 30.00

(2) annual continuation of license 30.00

M. rating organization or rating advisory organization license -

100.00 (1) filing application for license and issuance of license, if issued

(2) annual continuation of license 100.00

N. nonprofit health care plans -

issued (1) filing application for preliminary permit and issuance of permit, if 100.00

(2) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers

(3) annual statement, filing 200.00

(4) agents and solicitors -

license, if issued (a) filing application for original license and issuance of 30.00

(b) examination for license conducted directly by superintendent, each instance of

examination 50.00

(c) annual continuation of

appointment 20.00

O. prepaid dental plans -

(1) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers

(2) annual report, filing 200.00

(3) agents and solicitors -

(a) filing application for original license and issuance of license, if issued 30.00

(b) examination for license conducted directly by superintendent, each instance of

examination 50.00

(c) continuation of license, each

year 20.00

P. prearranged funeral insurance - application for certificate of authority, issuance, continuation, reinstatement, charter documents, filing annual statement, licensing of sales representatives - same as for insurers

Q. premium finance companies -

(1) filing application for original license and issuance of license, if issued 100.00

(2) annual renewal of license 100.00

R. motor clubs -

(1) certificate of authority -

(a) filing application for original certificate of authority and issuance of certificate of authority, if issued 200.00

100.00 (b) annual continuation of certificate of authority

(2) sales representatives -

(a) filing application for registration or license and issuance of registration or license, if issued, each representative 20.00

(b) annual continuation of registration or license, each representative 20.00

S. bail bondsmen -

(1) filing application for original license as bail bondsman or solicitor, and issuance of license, if issued 30.00

(2) examination for license conducted directly by superintendent, each instance of

examination 50.00

(3) continuation of appointment, each year 20.00

T. securities salesperson license -

25.00 (1) filing application for license and issuance of license, if issued

(2) renewal of license, each year 25.00

U. for each signature and seal of the superintendent affixed to any instrument 10.00

V. required filing of forms or rates - by all lines of business other than property or casualty

(1) rates 50.00

(2) major form - each new policy and each package submission, which can include multiple policy forms, application forms, rider forms, endorsement forms or amendment forms 30.00

(3) incidental forms and rates - forms filed for informational purposes; riders, applications, endorsements and amendments filed individually; rate service organization reference filings; rates filed for informational purposes 15.00

W. health maintenance organizations -

(1) filing an application for a certificate of authority 1,000.00

(2) annual continuation of certificate of authority, each year
continued 200.00

(3) filing each annual report 200.00

(4) filing an amendment to organizational documents requiring
approval 200.00

(5) filing informational
amendments 50.00

(6) agents and solicitors -

(a) filing application for original license and issuance of
license, if issued 30.00

(b) examination for license, each instance of examination
50.00

(c) annual continuation of
appointment 20.00

X. purchasing groups and foreign risk retention groups -

(1) original registration 500.00

(2) annual continuation of
registration 200.00

(3) agent or broker fees same as for authorized insurers

Y. third party administrators -

(1) filing application for original individual insurance administrator
license 30.00

(2) filing application for original officer, manager or partner
insurance administrator

license 30.00

(3) continuation or renewal of annual

license 30.00

(4) examination for license conducted directly by the
superintendent, each examination 75.00

30.00 (5) each request for a duplicate license or for each name change

(6) filing of annual report 50.00.

An insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, whenever form or rate-filing fees in excess of those imposed by state law are charged to insurers in New Mexico doing business in another state or whenever a condition precedent to the right to issue policies in another state is imposed by the laws of that state over and above the conditions imposed upon insurers by the laws of New Mexico; in those cases, the same form or rate-filing fees may be imposed upon an insurer from another state transacting or applying to transact business in New Mexico so long as the higher fees remain in force in the other state. If an insurer does not comply with the additional retaliatory or reciprocal requirement charges imposed under this subsection, the superintendent may refuse to grant or may withdraw approval of the tendered form or rate filing.

All fees are earned when paid and are not refundable."

Section 2. Section 59A-11-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 187) is amended to read:

"59A-11-8. ISSUANCE, REFUSAL OF LICENSE.--If the superintendent finds that the application is complete, that the applicant has passed all required examinations and is otherwise qualified for the license applied for, the superintendent shall promptly issue the license. Otherwise, the superintendent shall refuse to issue the license and promptly notify the applicant and the appointing insurer, employer or principal, where applicable, of the refusal and state the grounds for refusal."

Section 3. Section 59A-12-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 221, as amended by Laws 1999, Chapter 272, Section 12 and also by Laws 1999, Chapter 289, Section 13) is amended to read:

"59A-12-20. PLACE OF BUSINESS--DISPLAY OF LICENSE.--

A. A general lines agent shall have and maintain a place of business accessible to the public, where the licensee conducts transactions under the license. Nothing in this section shall prohibit maintenance of the place of business in the licensee's residence.

B. The licenses of the licensee and of solicitors employed by the licensee shall be conspicuously displayed in the place of business in a part customarily open to the public.

C. This section does not apply to life insurance, annuity contracts or health insurance."

Section 4. Section 59A-12-26 NMSA 1978 (being Laws 1984, Chapter 127, Section 227, as amended by Laws 1999, Chapter 272, Section 16 and also by Laws 1999, Chapter 289, Section 17) is amended to read:

"59A-12-26. CONTINUED EDUCATION.--

A. For protection of the public and to preserve and improve competence of licensees, the superintendent may in his sole discretion require as a condition to continuation of license as agent, solicitor or broker under this article that during the twelve months next preceding expiration of the current license period the licensee has attended the minimum number of hours of formal class instruction, lectures or seminars required and approved by the superintendent covering the kinds of insurance for which licensed.

B. Instruction shall be designed to refresh the licensee's understanding of basic principles and coverages involved, recent and prospective changes, applicable laws and rules of the superintendent, proper conduct of the licensee's business and duties and responsibilities of the licensee.

C. The superintendent may permit licensees who because of remoteness of residence or business cannot with reasonable convenience attend formal instruction sessions and successfully complete an equivalent course of study and instruction by mail.

D. The superintendent shall promulgate rules for the purposes and requirements of this section and may impose a penalty not to exceed fifty dollars (\$50.00) for a licensee's failure to timely report continuing education credits.

E. For the purposes of this section, the superintendent shall charge, at the time of certifying each licensee's continuing education credits as a condition of

continuation of license, a fee of one dollar (\$1.00) per credit hour of continuing education; provided that the superintendent may contract with an established and experienced independent agency to receive and review continuing education compliance reports and, in such a case, the fee shall be a reasonable amount fixed by the superintendent and payable to the contracting agency.

F. This section shall not apply to holders of limited license issued under Section 59A-12-18 NMSA 1978."

Section 5. A new section of the New Mexico Insurance Code, Section 59A-12-20.1 NMSA 1978, is enacted to read:

"CHANGE OF ADDRESS--NOTICE REQUIRED--PENALTY.--The address of the licensee's place of business shall appear on the application for the license and on the license. The licensee shall promptly notify the superintendent in writing of a change of address. Failure to notify the superintendent of a change of address within twenty days shall subject the licensee to a penalty of fifty dollars (\$50.00)."

Section 6. Section 59A-13-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 230, as amended) is amended to read:

"59A-13-2. DEFINITIONS.--

A. For the purposes of the Insurance Code:

(1) "adjuster" is a person that:

(a) investigates, negotiates, settles or adjusts a loss or claim arising under an insurance contract on behalf of an insurer, insured or self-insurer, for a fee, commission or other compensation; however, an adjuster acting on behalf of an insured shall not investigate, negotiate, settle or adjust a claim involving personal injury to the insured; and

(b) advises the insured of his rights to settlement and his rights to settle, arbitrate and litigate the dispute;

(2) "staff adjuster" is an adjuster individual who is a salaried employee of an insurer, representing and adjusting claims solely under policies of the employer insurer; and

(3) "independent adjuster" is an adjuster who is not a staff adjuster and includes a representative and an employee of an independent adjuster.

B. Except as otherwise provided, "adjuster" does not include:

(1) an attorney-at-law who adjusts insurance losses or claims from time to time incidental to practice of law and who does not advertise or represent as an adjuster;

(2) a licensed agent or general agent of an authorized insurer or an employee of an agent or general agent who adjusts claims or losses under specific authority from the insurer and solely under policies issued by the insurer;

(3) an agent or employee of a life or health insurer who adjusts claims or losses under the insurer's policies or contracts to administer policies or benefits of that type; or

(4) a salaried or part-time claims agent or investigator employed by a self-insured person."

Section 7. Section 59A-13-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 237) is amended to read:

"59A-13-9. PLACE OF BUSINESS.--A licensed adjuster shall have and maintain a principal place of business in the state that is easily accessible to the public and is the place where the adjuster principally conducts transactions under the license. The address of the principal place of business shall appear on the application for license and on the license. The licensee shall promptly notify the superintendent of a change of address of the principal place of business. Failure to notify the superintendent of a change of address within twenty days shall subject the licensee to a penalty in the amount of fifty dollars (\$50.00)."

Section 8. Laws 1996, Chapter 6, Section 3 is amended to read:

"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 an amount not exceeding one million dollars (\$1,000,000) for the purpose of financing information and communication equipment, including computer hardware and software, for the insurance division of the public regulation commission.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the superintendent of insurance certifies the need to issue the bonds. The net proceeds from the sale of the bonds are appropriated to the insurance division for the purposes described in Subsection A of this section.

C. The proceeds from the surcharge imposed pursuant to Section 59A-6-1.1 NMSA 1978 shall be distributed monthly to the New Mexico finance authority to be

pledged irrevocably for the payment of the principal, interest and any other expenses or obligations related to the bonds.

D. The surcharge proceeds distributed to the New Mexico finance authority shall be deposited in a separate fund or account of the authority. At the end of each fiscal year, any money remaining in the separate fund or account from distributions made to the authority during that fiscal year, after all principal, interest and any other expenses or obligations related to the bonds in that fiscal year are fully paid, may be appropriated by the legislature to the insurance division for acquisition, maintenance and operation of information and communication equipment, including computer hardware, software, systems planning, deployment and training. Upon payment of all principal, interest and any other expenses or obligations related to the bonds, the authority shall certify to the insurance division that all obligations for the bonds issued pursuant to this section have been fully discharged and direct the division to cease distributing money pursuant to Section 59A-6-1.1 NMSA 1978 to the authority.

E. Any law authorizing the imposition or distribution of the surcharge or that affects the surcharge shall not be amended, repealed or otherwise directly or indirectly modified to impair any outstanding revenue bonds that may be secured by a pledge of the surcharge collections, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge."

SENATE BILL 181, AS AMENDED

CHAPTER 307

CHAPTER 307, LAWS 2003

AN ACT

RELATING TO HEALTH CARE; ENACTING THE NURSE LICENSURE COMPACT; REQUIRING REGISTRATION FOR MULTISTATE LICENSURE PRIVILEGES; PROVIDING FOR A NURSE LICENSURE COMPACT ADMINISTRATOR; AMENDING AND ENACTING SECTIONS OF THE NURSING PRACTICE ACT; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Nursing Practice Act is enacted to read:

"COMPACT ENTERED INTO.--The Nurse Licensure Compact is entered into law and entered into with all other jurisdictions legally joining therein in a form substantially as follows:

"NURSE LICENSURE COMPACT

ARTICLE 1 - Findings and Purpose

A. The party states find that:

(1) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) violation of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and

(5) the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

B. The general purposes of this compact are to:

(1) facilitate the states' responsibility to protect the public's health and safety;

(2) ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

(4) promote compliance with the laws governing the practice of nursing in each jurisdiction; and

(5) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE 2 - Definitions

As used in the Nurse Licensure Compact:

A. "adverse action" means a home or remote state action;

B. "alternative program" means a voluntary, non-disciplinary monitoring program approved by a licensing board;

C. "coordinated licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state licensing boards;

D. "current significant investigative information" means:

(1) investigative information that a licensing board, after a preliminary inquiry that includes notification and opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond;

E. "home state" means the party state that is the nurse's primary state of residence;

F. "home state action" means an administrative, civil, equitable or criminal action permitted by the home state's laws that are imposed on a nurse by the home state's licensing board or other authority, including actions against an individual's license such as: revocation, suspension, probation or any other action that affects a nurse's authorization to practice;

G. "licensing board" means a party state's regulatory body responsible for issuing nurse licenses;

H. "multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice;

I. "nurse" means a registered nurse or licensed practical or vocational nurse, as those terms are defined by each party state's practice laws;

J. "party state" means a state that has adopted the Nurse Licensure Compact;

K. "remote state" means a party state, other than the home state:

(1) where the patient is located at the time nursing care is provided;
or

(2) in the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located;

L. "remote state action" means:

(1) an administrative, civil, equitable or criminal action permitted by a remote state's laws that are imposed on a nurse by the remote state's licensing board or other authority, including actions against a nurse's multistate licensure privilege to practice in the remote state; and

(2) cease and desist orders and other injunctive or equitable orders issued by remote states or the licensing boards thereof;

M. "state" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico; and

N. "state practice laws" means an individual party state's laws and regulations that govern the practice of nursing, define the scope of nursing practice and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE 3 - General Provisions and Jurisdiction

A. A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical or vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical or vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

B. A party state may, in accordance with state due process laws, limit or revoke a multistate licensure privilege of any nurse to practice in the state and may take any other action under applicable state laws necessary to protect the health and safety of state citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the

coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

C. A nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

D. The Nurse Licensure Compact does not affect additional requirements imposed by a party state for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

E. Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE 4 - Application for Licensure in a Party State

A. Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege and whether any other adverse action by any state has been taken against the license.

B. A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

C. A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after the nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

D. When a nurse changes primary state of residence by:

(1) moving from one party state to another party state, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty

state is not affected and will remain in full force if so provided by the laws of the nonparty state; or

(3) moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensing privilege to practice in other party states.

ARTICLE 5 - Adverse Actions

In addition to the general provisions described in Article 3 of the Nurse Licensure Compact, the following provisions apply.

A. The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

B. The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate actions, and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

C. A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state has the power to impose adverse action against the license issued by the home state.

D. For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

E. The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

F. Nothing in the Nurse Licensure Compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE 6 - Additional Authorities Invested in

Party State Licensing Boards

Notwithstanding any other powers, a party state licensing board shall have authority to:

A. if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

B. issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses or evidence is located;

C. issue cease and desist orders to limit or revoke a nurse's authority to practice in the state; and

D. promulgate uniform rules and regulations as provided for in Article 8 of the Nurse Licensure Compact.

ARTICLE 7 - Coordinated Licensure Information System

A. All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical or vocational nurses. This system will include information on the licensure and disciplinary history of each nurse as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

B. Notwithstanding any other provision of law, all party state licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action and denials of applications and the reasons for such denials to the coordinated licensure information system.

C. Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

D. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may

designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing party state.

E. Any personally identifiable information obtained by a party state licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

F. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing the information shall also be expunged from the coordinated licensure information system.

G. The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under the Nurse Licensure Compact.

ARTICLE 8 - Compact Administration and

Interchange of Information

A. The executive head of the licensing board, or the executive head's designee, of a party state shall be the administrator of the Nurse Licensure Compact for the state.

B. The compact administrator of each party state shall furnish to the compact administrator of every other party state any information and documents, including but not limited to a uniform data set of investigations, identifying information, licensure data and disclosable alternative program participation information to facilitate the administration of the Nurse Licensure Compact.

C. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of the Nurse Licensure Compact. These uniform rules shall be adopted by party states, under the authority invested under Subsection D of Article 6 of the Nurse Licensure Compact.

ARTICLE 9 - Immunity

A party state or the officers or employees or agents of a party state licensing board who act in accordance with the provisions of the Nurse Licensure Compact shall not be liable on account of any act or omission in good faith while engaged in the performance of their duties under that compact. "Good faith" as used in this article does not include willful misconduct, gross negligence or recklessness.

ARTICLE 10 - Entry into Force, Withdrawal and Amendment

A. The Nurse Licensure Compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from that compact by enacting a statute repealing the same, but such withdrawal shall not take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

B. No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the Nurse Licensure Compact of any report of adverse action occurring prior to the withdrawal.

C. Nothing contained in the Nurse Licensure Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of that compact.

D. The Nurse Licensure Compact may be amended by the party states. No amendment to that compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE 11 -- Construction and Severability

A. The Nurse Licensure Compact shall be liberally construed to effectuate the purposes of that compact. The provisions of that compact shall be severable and if any phrase, clause, sentence or provision of that compact is declared to be contrary to the constitution of any party state 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 that compact and the applicability of that compact to any government, agency, person or circumstance shall not be affected. If that compact is held contrary to the constitution of any party state, that compact, shall remain in full force and effect as to the remaining party states and in full force and effect as to the party states affected as to all severable matters.

B. In the event party states find a need for settling disputes arising under the Nurse Licensure Compact:

(1) the party states may submit the issues in dispute to an arbitration panel that will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in a remote state involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(2) the decision of a majority of the arbitrators shall be final and binding."."

Section 2. A new section of the Nursing Practice Act is enacted to read:

"NURSE LICENSURE COMPACT ADMINISTRATOR--DUTIES.--The Nurse Licensure Compact administrator shall be the executive director of the board or his designee and shall:

A. develop rules and make recommendations to the board concerning the administration of the Nurse Licensure Compact, including procedures for reporting an adverse disciplinary action taken by the board against a nurse practicing pursuant to a multistate licensure privilege;

B. work with Nurse Licensure Compact administrators from other party states to communicate, provide and exchange information pertinent to the administration of the Nurse Licensure Compact; and

C. provide pertinent information to the administrator of the coordinated licensure information system and compile, for the board's use, information received from that administrator pursuant to the Nurse Licensure Compact."

Section 3. A new section of the Nursing Practice Act is enacted to read:

"MULTISTATE LICENSURE PRIVILEGE--REGISTRATION--FEE--RENEWAL.--

A. A nurse not licensed to practice in this state, whose home state is not New Mexico and who wishes to practice in this state pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact shall register with the board within thirty days after beginning to practice nursing in New Mexico. The nurse shall complete a registration form that contains:

(1) the nurse's full name, home state residence address, as well as a temporary residence address in New Mexico, if applicable, and phone number;

(2) the identity of the nurse's home state and the type of nursing license the nurse holds in the home state, as well as a declaration of whether the license held is current and in good standing; and

(3) the name, address and phone number of the nurse's place of nursing employment in New Mexico.

B. A nurse registering with the board pursuant to Subsection A of this section may be required by the board to pay a registration fee set by the board not to exceed twenty-five dollars (\$25.00).

C. A nurse who practices nursing in New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact who wishes to cease practicing in the state shall notify the board in writing of the date upon which the nurse will no longer practice."

Section 4. Section 61-3-1 NMSA 1978 (being Laws 1968, Chapter 44, Section 1) is amended to read:

"61-3-1. SHORT TITLE.--Chapter 61, Article 3 NMSA 1978 may be cited as the "Nursing Practice Act"."

Section 5. 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. "emergency procedures" means airway and vascular access procedures;

H. "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 or a nurse who practices licensed

practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

I. "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;

J. "Nurse Licensure Compact" means the agreement entered into between New Mexico and other jurisdictions permitting the practice of professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege;

K. "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;

L. "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;

M. "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;

N. "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 or a nurse who practices professional registered nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact; and

O. "scope of practice" means the parameters within which nurses practice based upon education, experience, licensure, certification and expertise."

Section 6. 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. Except as otherwise provided in the Nursing Practice Act, no person shall use the title "nurse" unless the person is licensed or has been licensed in the past as a registered nurse or licensed practical nurse under the Nursing Practice Act.

B. Except as otherwise provided in the Nursing Practice Act, 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.

C. Except as otherwise provided in the Nursing Practice Act, 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.

D. 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.

E. 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.

F. 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.

G. No licensed nurse shall be prohibited from identifying himself or his licensure status."

Section 7. 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, if a majority of the board concurs in the 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 nurse not licensed to practice in New Mexico who is permitted to practice professional registered nursing or licensed practical nursing in New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact 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;

Q. shall register nurses not licensed to practice in New Mexico who are permitted to practice professional registered nursing or licensed practical nursing in

New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact; and

R. shall adopt rules and regulations establishing standards for authorizing prescriptive authority to certified nurse practitioners and clinical nurse specialists."

Section 8. Section 61-3-28 NMSA 1978 (being Laws 1968, Chapter 44, Section 24, as amended) is amended to read:

"61-3-28. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--APPLICATION OF UNIFORM LICENSING ACT--LIMITATION.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any license held or applied for under the Nursing Practice Act, reprimand or place a licensee on probation or deny, limit or revoke the multistate licensure privilege of a nurse desiring to practice or practicing professional registered nursing or licensed practical nursing as provided in the Nurse Licensure Compact upon grounds that the licensee, applicant or nurse:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license or certificate of registration;

(2) is convicted of a felony;

(3) is unfit or incompetent;

(4) is intemperate or is addicted to the use of habit-forming drugs;

(5) is mentally incompetent;

(6) is guilty of unprofessional conduct as defined by the rules and regulations adopted by the board pursuant to the Nursing Practice Act;

(7) has willfully or repeatedly violated any provisions of the Nursing Practice Act, including any rule or regulation adopted by the board pursuant to that act; or

(8) was licensed to practice nursing in any jurisdiction, territory or possession of the United States or another country and was the subject of disciplinary action as a licensee for acts similar to acts described in this subsection. A certified copy of the record of the jurisdiction, territory or possession of the United States or another country taking the disciplinary action is conclusive evidence of the action.

B. Disciplinary proceedings may be instituted by any person, shall be by 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. Any person filing a 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 board shall not initiate a disciplinary action more than two years after the date that it receives a complaint.

E. The time limitation contained in Subsection D of this section shall not be tolled by any civil or criminal litigation in which the licensee or applicant is a party, arising substantially from the same facts, conduct, transactions or occurrences that would be the basis for the board's disciplinary action.

F. The board may recover the costs associated with the investigation and disposition of a disciplinary proceeding from the nurse who is the subject of the proceeding if the nurse is practicing professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact."

Section 9. TEMPORARY PROVISION--REPORT.--The board of nursing shall submit a report containing a recommendation concerning the continuation of New Mexico's participation in the provisions of the Nurse Licensure Compact to the legislature no later than November 20, 2007.

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2004.

SENATE BILL 186, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 308

CHAPTER 308, LAWS 2003

AN ACT

RELATING TO INFORMATION TECHNOLOGY; CLARIFYING PROVISIONS OF THE INFORMATION TECHNOLOGY MANAGEMENT ACT; REVISING THE MEMBERSHIP OF THE INFORMATION TECHNOLOGY COMMISSION; EXTENDING THE

TERMINATION DATE FOR THE COMMISSION; PROVIDING PENALTIES FOR NONCOMPLIANCE BY PUBLIC OFFICIALS OR EMPLOYEES; 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 15-1C-1 NMSA 1978 (being Laws 1999, Chapter 16, Section 1) is amended to read:

"15-1C-1. SHORT TITLE.--Chapter 15, Article 1C

NMSA 1978 may be cited as the "Information Technology Management Act".

Section 2. Section 15-1C-2 NMSA 1978 (being Laws 1999, Chapter 16, Section 2) is amended to read:

"15-1C-2. PURPOSE.--The purpose of the Information Technology Management Act is to:

- A. coordinate policies and procedures for e-government;
- B. assess and inventory current information technology services and resources;
- C. coordinate central and individual executive agency information technology in a manner that ensures compliance with state information architecture and that ensures cost-effective and efficient information and communication systems and resources are being used by executive agencies;
- D. develop a three-year state information technology strategic plan for information and communication management that is updated annually by the information technology commission; and
- E. promote data sharing between governmental entities and provide a mechanism for information technology expertise to be shared between the branches of state government and local governments."

Section 3. Section 15-1C-3 NMSA 1978 (being Laws 1999, Chapter 16, Section 3) is amended to read:

"15-1C-3. DEFINITIONS.--As used in the Information Technology Management Act:

- A. "agency plan" means an executive agency's annual information technology plan;

B. "commission" means the information technology commission;

C. "executive agency" means a state agency of the executive branch of government;

D. "e-government" means the provision of access to government information and services via the internet that complies with state information architecture;

E. "information technology" means computer and voice and data communication software and hardware, including imaging systems, terminals and communications networks and facilities, staff information systems services and professional services contracts for information systems services;

F. "information technology project" means the purchase, replacement, development or modification of a hardware or software system;

G. "office" means the office of the chief information officer;

H. "state information architecture" means a logically consistent set of principles, policies and standards that guides the engineering of state government's information technology systems and infrastructure in a way that ensures alignment with state government's business needs; and

I. "state information technology strategic plan" means the information technology planning document for the state that spans a three-year period."

Section 4. Section 15-1C-4 NMSA 1978 (being Laws 1999, Chapter 16, Section 4) is amended to read:

"15-1C-4. COMMISSION CREATED--MEMBERSHIP.--

A. The "information technology commission" is created. The commission consists of thirteen members as follows:

(1) five members appointed by the governor, three of whom are from agencies whose primary funding is not from internal service funds;

(2) one staff member with telecommunications regulatory experience appointed by the chairman of the public regulation commission;

(3) two members representing education, one appointed by the commission on higher education and one appointed by the president of the state board of education;

(4) two members from the national laboratories;

(5) three members appointed by the governor to represent the public with information technology and management experience, but who are not employees of the state or a political subdivision of the state and who do not have any financial interest in the state information systems or state contracts. The public members shall serve for staggered three-year terms.

B. Additionally, the following advisory members may serve on the commission:

(1) two members from the judicial information systems council appointed by the chairman of that council;

(2) one staff member from the legislative council service and one staff member from the legislative finance committee, appointed by their respective directors; and

(3) the chief information officer.

C. Members of the commission, except the three public members appointed by the governor, may select designees to represent them and vote on their behalf.

D. The members of the commission who are not supported by public money, or their designees, may receive per diem and mileage pursuant to the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

E. The commission shall elect a chairman and vice chairman from the active membership of the commission for two-year terms.

F. The commission shall meet at least semiannually and may meet at the call of the chairman or a majority of the members."

Section 5. Section 15-1C-5 NMSA 1978 (being Laws 1999, Chapter 16, Section 5) is amended to read:

"15-1C-5. COMMISSION--POWERS AND DUTIES.--The commission shall:

A. adopt and promulgate rules that delineate the state information architecture as a framework for the state information technology strategic plan;

B. adopt and promulgate other rules necessary for the administration of the Information Technology Management Act and the conduct of the affairs of the office;

C. develop and annually review strategies for identifying information technology projects that impact multiple agencies and ensure that those information technology projects are appropriately designed and developed;

D. provide information technology planning guidelines for agency annual plans;

E. update state information architecture and the state information technology strategic plan annually, including identifying areas of noncompliance with the state information technology strategic plan;

F. submit proposed rules to the information technology oversight committee for its review prior to adoption;

G. review and comment on information technology appropriation requests presented to it by the chief information officer and report to the legislative finance committee and the information technology oversight committee regarding those requests;

H. establish policies, procedures and rules to ensure that information technology projects satisfy criteria established by the commission and are phased in, that funding is released in phases and that an executive agency's authority to proceed to the next phase of an information technology project is contingent upon successful completion of the prior phase. The policies, procedures and rules shall require the identification of one or more specific deliverables for each phase; and

I. adopt and promulgate rules to provide for mediation of disputes between an executive agency and the chief information officer pursuant to Paragraph (2) or (4) of Subsection B of Section 15-1C-7 NMSA 1978."

Section 6. Section 15-1C-6 NMSA 1978 (being Laws 1999, Chapter 16, Section 6) is amended to read:

"15-1C-6. OFFICE OF THE CHIEF INFORMATION OFFICER CREATED--
ADMINISTRATIVE ATTACHMENT--CHIEF INFORMATION OFFICER--
QUALIFICATIONS--STAFF.--

A. The "office of the chief information officer" is created. The office is administratively attached to the office of the governor.

B. The head of the office is the "chief information officer", who is appointed by the governor with the advice and consent of the senate. The chief information officer shall have a minimum of seven years' experience in the management of a large information technology enterprise. The chief information officer serves at the pleasure of the governor.

C. The chief information officer may hire staff as necessary to carry out the provisions of the Information Technology Management Act. Staff of the office are subject to the provisions of the Personnel Act."

Section 7. Section 15-1C-7 NMSA 1978 (being Laws 1999, Chapter 16, Section 7) is amended to read:

"15-1C-7. OFFICE--POWERS AND DUTIES.--

A. The office may:

(1) obtain information, documents and records that are not confidential by law from an executive agency as needed to carry out the provisions of the Information Technology Management Act;

(2) enter into contracts;

(3) perform reviews of executive agency information technology projects or information technology management processes; and

(4) when requested, offer assistance or expertise to the judiciary, legislature, institutions of higher education, counties, municipalities, public school districts and other political subdivisions of the state.

B. The office shall:

(1) review agency plans and make recommendations to the commission regarding prudent allocation of information technology resources; reduction of data, hardware and software redundancy; and improving system interoperability and data accessibility between agencies;

(2) approve executive agency information technology requests for proposals and contract vendor requests that are subject to the Procurement Code, prior to final approval;

(3) recommend procedures and rules to the commission for improved oversight of information technology procurement;

(4) approve executive agency information technology contracts and amendments to those contracts, including emergency procurements, sole source contracts and price agreements, prior to final execution;

(5) verify compliance with state information architecture and the state information technology strategic plan before approving documents referred to in Paragraphs (2) and (4) of this subsection;

(6) monitor executive agency compliance with its agency plan, the state information technology strategic plan and state information architecture and report to the governor, the commission and executive agency management on noncompliance;

(7) review information technology cost recovery mechanisms and information systems rate structures of executive agencies and make recommendations to the commission;

(8) provide technical support to executive agencies in the development of their agency plans;

(9) review appropriation requests related to executive agency information technology requests to ensure compliance with agency plans and the state information technology strategic plan and make written recommendations to the department of finance and administration, the legislative finance committee, the information technology oversight committee and the commission by November 30 of each year;

(10) provide oversight of information technology projects, including ensuring adequate risk management and disaster recovery practices and monitoring compliance with strategies developed by the commission for information technology projects that impact multiple agencies; and

(11) perform any other function assigned by the commission."

Section 8. Section 15-1C-8 NMSA 1978 (being Laws 1999, Chapter 16, Section 8) is amended to read:

"15-1C-8. AGENCY PLANS--CERTIFICATION--NONCOMPLIANCE--PENALTIES.--

A. Agency plans shall:

(1) be consistent with the state information technology strategic plan;

(2) demonstrate that the executive agency has developed information technology objectives consistent with the agency plan, the state information technology strategic plan and the state information architecture;

(3) show appropriate coordination with other executive agencies to improve customer service and reduce redundant data, hardware and software;

(4) include information about information technology objectives, inventories, data and expenditures for each fiscal year;

(5) demonstrate consistency with appropriations and budgets approved by the department of finance and administration; and

(6) include any other components required by the office or the commission.

B. Prior to making information technology purchases, regardless of the funding source, an executive agency shall certify to the commission, pursuant to rules adopted by the commission, that its proposed information technology purchases are consistent with its agency plan, the state information architecture adopted by the commission and the state information technology strategic plan. The commission or the office may delay or stop a purchase if it believes that the proposed purchase may not meet the requirements of the agency plan, state information architecture or the state information technology strategic plan.

C. A person who makes an information technology purchase or sale and intentionally fails to comply with the certification requirements set forth in Subsection B of this section is in violation of the provisions of the Procurement Code (13-1-28 NMSA 1978, 1984) and is guilty of a misdemeanor. The person shall also be individually liable to the state for the amount of the purchase and civil penalties as provided under the Procurement Code and:

(1) is guilty of a misdemeanor, as provided in Section 31-19-1 NMSA 1978;

(2) is subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation; and

(3) shall be individually liable to the state for the amount of the purchase or sale."

Section 9. A new section of the Information Technology Management Act is enacted to read:

"INFORMATION TECHNOLOGY PLANS AND PROJECTS--COMMISSION ON HIGHER EDUCATION--STATE DEPARTMENT OF PUBLIC

EDUCATION--JUDICIAL BRANCH--LEGISLATIVE BRANCH.--

A. The commission on higher education, the state department of public education, the judicial branch of government and the legislative branch of government are encouraged to submit their annual information technology plans to the office, the legislative finance committee and the information technology oversight committee for review and comment by those entities.

B. The commission on higher education, the state department of public education, the judicial branch of government and the legislative branch of government are encouraged to submit periodic status reports regarding information technology projects to the office and the legislative finance committee for review and comment.

C. The commission on higher education, the state department of public education, the judicial branch of government and the legislative branch of government are encouraged, but not required, to certify to the commission that their information technology projects are consistent with their information technology plans."

Section 10. Section 15-1C-9 NMSA 1978 (being Laws 1999, Chapter 16, Section 9) is amended to read:

"15-1C-9. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The information technology commission is terminated July 1, 2009 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of the Information Technology Management Act until July 1, 2010."

Section 11. Section 15-1C-11 NMSA 1978 (being Laws 1999, Chapter 16, Section 11) is amended to read:

"15-1C-11. OVERSIGHT COMMITTEE DUTIES.--

A. The information technology oversight committee shall hold one organizational meeting each year to develop a work plan and budget for the ensuing interim. The work plan and budget shall be submitted to the New Mexico legislative council for approval.

B. The committee shall:

(1) monitor the work of the information technology commission and the office of the chief information officer, including reviewing the commission's rules setting out the policies, standards, procedures and guidelines for information architecture and development projects and the annual update of the state information technology strategic plan;

(2) oversee the implementation of the Information Technology Management Act, review the work of the judicial information systems council and the judicial information division and oversee any other state-funded systems;

(3) meet on a regular basis to receive and evaluate periodic reports from the information technology commission and office of the chief information officer; and

(4) perform such other related duties as assigned by the legislative council.

C. The committee shall make a report of its findings and recommendations for the consideration of each session of the legislature. The report and any suggested

legislation shall be made available to the legislative council by December 31 preceding that session."

Section 12. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE JUDICIARY COMMITTEE

SUBSTITUTE FOR SENATE BILL 244,

AS AMENDED, WITH EMERGENCY CLAUSE,

SIGNED APRIL 8, 2003

CHAPTER 309

CHAPTER 309, LAWS 2003

AN ACT

RELATING TO INDEMNIFICATION; MAKING VOID CERTAIN INDEMNIFICATION AGREEMENTS.

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

Section 1. Section 56-7-1 NMSA 1978 (being Laws 1971, Chapter 107, Section 1) is amended to read:

"56-7-1. REAL PROPERTY--INDEMNITY AGREEMENTS--AGREEMENTS VOID.--

A. A provision in a construction contract that requires one party to the contract to indemnify, hold harmless, insure or defend the other party to the contract, including the other party's employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents, is void, unenforceable and against the public policy of the state.

B. A construction contract may contain a provision that, or shall be enforced only to the extent that, it:

(1) requires one party to the contract to indemnify, hold harmless or insure the other party to the contract, including its officers, employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the indemnitor or its officers, employees or agents; or

(2) requires a party to the contract to purchase a project-specific insurance policy, including an owner's or contractor's protective insurance, project management protective liability insurance or builder's risk insurance.

C. This section does not apply to indemnity of a surety by a principal on any surety bond or to an insurer's obligation to its insureds.

D. As used in this section, "construction contract" means a public, private, foreign or domestic contract or agreement relating to construction, alteration, repair or maintenance of any real property in New Mexico and includes agreements for architectural services, demolition, design services, development, engineering services, excavation, or other improvement to real property, including buildings, shafts, wells and structures, whether on, above or under real property.

E. As used in this section, "indemnify" or "hold harmless" includes any requirement to name the indemnified party as an additional insured in the indemnitor's insurance coverage for the purpose of providing indemnification for any liability not otherwise allowed in this section."

Section 2. Section 56-7-2 NMSA 1978 (being Laws 1971, Chapter 205, Section 1, as amended) is amended to read:

"56-7-2. OIL, GAS OR WATER WELLS AND MINERAL MINES--AGREEMENTS, COVENANTS AND PROMISES TO INDEMNIFY VOID.--

A. An agreement, covenant or promise, foreign or domestic, contained in, collateral to or affecting an agreement pertaining to a well for oil, gas or water, or mine for a mineral, within New Mexico, that purports to indemnify the indemnitee against loss or liability for damages arising from the circumstances specified in Paragraph (1), (2) or (3) of this subsection is against public policy and is void:

(1) the sole or concurrent negligence of the indemnitee or the agents or employees of the indemnitee;

(2) the sole or concurrent negligence of an independent contractor who is directly responsible to the indemnitee; or

(3) an accident that occurs in operations carried on at the direction or under the supervision of the indemnitee, an employee or representative of the

indemnitee or in accordance with methods and means specified by the indemnitee or employees or representatives of the indemnitee.

B. As used in this section, "agreement pertaining to a well for oil, gas or water, or mine for a mineral" means an agreement:

(1) concerning any operations related to drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, altering, plugging or otherwise rendering services in connection with a well drilled for the purpose of producing or disposing of oil, gas or other minerals or water;

(2) for rendering services in connection with a mine shaft, drift or other structure intended for use in the exploration for or production of a mineral; or

(3) to perform a portion of the work or services described in Paragraph (1) or (2) of this subsection or an act collateral thereto.

C. A provision in an insurance contract indemnity agreement naming a person as an additional insured or a provision in an insurance contract or any other contract requiring a waiver of rights of subrogation or otherwise having the effect of imposing a duty of indemnification on the primary insured party that would, if it were a direct or collateral agreement described in Subsections A and B of this section, be void, is against public policy and void.

D. Nothing in this section:

(1) deprives an owner of the surface estate of the right to secure indemnity from a lessee, operator, contractor or other person conducting operations for the exploration of minerals on the owner's land; or

(2) affects the validity of a benefit conferred by the Workers' Compensation Act."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 280, AS AMENDED

CHAPTER 310

CHAPTER 310, LAWS 2003

AN ACT

RELATING TO LAND USE; REQUIRING COUNTIES AND MUNICIPALITIES TO REGULATE BUILDINGS AND BUILDING IMPROVEMENTS IN FLOOD HAZARD AREAS; REQUIRING STATE-FINANCED BUILDING IMPROVEMENTS TO COMPLY WITH NATIONAL FLOOD INSURANCE PROGRAM STANDARDS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 3-18-7 NMSA 1978 (being Laws 1975, Chapter 14, Section 1, as amended) is amended to read:

"3-18-7. ADDITIONAL COUNTY AND MUNICIPAL POWERS--FLOOD AND MUDSLIDE HAZARD AREAS--FLOOD PLAIN PERMITS--LAND USE CONTROL-- JURISDICTION--AGREEMENT.--

A. For the purpose of minimizing or eliminating damage from floods or mudslides in federal emergency management agency and locally designated flood-prone areas and for the purpose of promoting health, safety and the general welfare, a county or municipality with identified flood or mudslide hazard areas shall by ordinance:

(1) designate and regulate flood plain areas having special flood or mudslide hazards;

(2) prescribe standards for constructing, altering, installing or repairing buildings and other improvements under a permit system within a designated flood or mudslide hazard area;

(3) require review by the local flood plain manager for development within a designated flood or mudslide hazard area provided final decisions are approved by the local governing body;

(4) review subdivision proposals and other new developments within a designated flood or mudslide hazard area to ensure that:

(a) all such proposals are consistent with the need to minimize flood damage;

(b) all public utilities and facilities such as sewer, gas, electrical and water systems are designed to minimize or eliminate flood damage; and

(c) adequate drainage is provided so as to reduce exposure to flood hazards;

(5) require new or replacement water supply systems or sanitary sewage systems within a designated flood or mudslide hazard area to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from

the systems into flood waters and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding; and

(6) designate and regulate floodways for the passage of flood waters.

B. A flood plain ordinance adopted pursuant to this section shall substantially conform to the minimum standards prescribed by the federal insurance administration, regulation 1910 issued pursuant to Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 575, all as amended.

C. A county or municipality that enacts a flood plain ordinance shall designate a person, certified pursuant to the state-certified flood plain manager program, as the flood plain manager to administer the flood plain ordinance.

D. A county or municipality that has areas designated by the federal emergency management agency and the county or municipality as flood-prone shall participate in the national flood insurance program.

E. A county or municipality shall have exclusive jurisdiction over flood plain permits issued under its respective flood plain ordinance in accordance with this section and so long as all structures built in flood plains are subject to inspection and approval pursuant to the Construction Industries Licensing Act. Notwithstanding Section 3-18-6 NMSA 1978, when a municipality adopts a flood plain ordinance pursuant to Paragraph (2) of Subsection A of this section, the municipality's jurisdiction under the flood plain ordinance may take precedence over a respective county flood plain ordinance within the municipality's boundary and within the municipality's subdividing and platting jurisdiction.

F. A county or municipality shall designate flood plain areas having special flood or mudslide hazards in substantial conformity with areas identified as flood- or mudslide-prone by the federal insurance administration pursuant to the national flood insurance program and may designate areas as flood- or mudslide-prone that may not be so identified by the federal insurance administration.

G. A municipality or county adopting a flood plain ordinance pursuant to this section may enter into reciprocal agreements with any agency of the state, other political subdivisions or the federal government in order to effectively carry out the provisions of this section.

H. The department of public safety is designated as the state coordinating agency for the national flood insurance program and may assist counties or municipalities when requested by a county or municipality to provide technical advice and assistance."

Section 2. PUBLIC BUILDINGS--COMPLIANCE WITH THE NATIONAL FLOOD INSURANCE PROGRAM.--A building that receives state appropriations for its construction or that is repaired or improved with state appropriations in an amount greater than fifty percent of the building's value before the repair or improvement shall comply with standards of the national flood insurance program and Section 3-18-7 NMSA 1978.

SENATE BILL 286, AS AMENDED

CHAPTER 311

CHAPTER 311, LAWS 2003

AN ACT

RELATING TO WELFARE REFORM; EXTENDING THE LIFE OF THE WELFARE REFORM OVERSIGHT COMMITTEE; AMENDING THE NEW MEXICO WORKS ACT; DECLARING AN EMERGENCY.

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

Section 1. Section 2-17-1 NMSA 1978 (being Laws 1998, Chapter 8, Section 21 and Laws 1998, Chapter 9, Section 21) is amended to read:

"2-17-1. WELFARE REFORM OVERSIGHT COMMITTEE CREATED--TERMINATION.--The joint interim legislative "welfare reform oversight committee" is created. The committee shall function from the date of its appointment until December 15 prior to the first session of the forty-ninth legislature."

Section 2. Section 27-2B-3 NMSA 1978 (being Laws 1998, Chapter 8, Section 3 and Laws 1998, Chapter 9, Section 3, as amended by Laws 2001, Chapter 295, Section 1 and by Laws 2001, Chapter 326, Section 1) is amended to read:

"27-2B-3. DEFINITIONS.--As used in the New Mexico Works Act:

A. "benefit group" means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step- or adopted

siblings living with the dependent child's parent or relative within the fifth degree of consanguinity and the parent with whom the children live;

B. "cash assistance" means cash payments funded by the temporary assistance for needy families block grant pursuant to the federal act and by state funds;

C. "department" means the human services department;

D. "dependent child" means a natural, adopted or

step-child or ward who is:

(1) seventeen years of age or younger;

(2) eighteen years of age and is enrolled in high school; or

(3) between eighteen and twenty-two years of age and is receiving special education services regulated by the state board of education;

E. "director" means the director of the income support division of the department;

F. "earned income" means cash or payment in kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services;

G. "federal act" means the federal Social Security Act and rules promulgated pursuant to the Social Security Act;

H. "federal poverty guidelines" means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services;

I. "immigrant" means alien as defined in the federal act;

J. "parent" means natural parent, adoptive parent, stepparent or legal guardian;

K. "participant" means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority;

L. "person" means an individual;

M. "secretary" means the secretary of the department;

N. "services" means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment, education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment;

O. "unearned income" means old age, survivors and disability insurance; railroad retirement benefits; veterans administration compensation or pension; military retirement; pensions, annuities and retirement benefits; lodge or fraternal benefits; shared shelter payments; settlement payments; individual Indian money; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income; and

P. "vehicle" means a conveyance for the transporting of individuals to or from employment, for the activities of daily living or for the transportation of goods; "vehicle" does not include boats, trailers or mobile homes used as a principal place of residence."

Section 3. Section 27-2B-6 NMSA 1978 (being Laws 1998, Chapter 8, Section 6 and Laws 1998, Chapter 9, Section 6, as amended by Laws 2001, Chapter 295, Section 3 and by Laws 2001, Chapter 326, Section 3) is amended to read:

"27-2B-6. DURATIONAL LIMITS.--

A. Pursuant to the federal act, on or after July 1, 1997 a participant may receive federally funded cash assistance and services for up to sixty months.

B. During a participant's fourth, sixth and eighth semi-annual reviews, the department shall examine the participant's progress to determine if the participant has successfully completed an educational or training program or increased the number of hours he is working as required by the federal act. The department may refer the participant to alternative work activities or provide additional services to address possible barriers to employment facing the participant.

C. Up to twenty percent of the population of participants may be exempted from the sixty-month durational limit set out in Subsection A of this section because of hardship or because those participants are battered or subject to extreme cruelty.

D. For the purposes of this section, a participant has been battered or subjected to extreme cruelty if he can demonstrate by reliable medical, psychological or mental reports, court orders or police reports that he has been subjected to and currently is affected by:

- (1) physical acts that result in physical injury;

- (2) sexual abuse;
- (3) being forced to engage in nonconsensual sexual acts or activities;
- (4) threats or attempts at physical or sexual abuse;
- (5) mental abuse; or
- (6) neglect or deprivation of medical care except when the deprivation is based by mutual consent on religious grounds.

E. For the purposes of this section, a hardship exception applies to a person who demonstrates through reliable medical, psychological or mental reports, social security administration records, court orders, police reports or department records that he is a person:

- (1) who is barred from engaging in a work activity because he is temporarily or completely disabled;
- (2) who is the sole provider of home care to an ill or disabled family member;
- (3) whose ability to be gainfully employed is affected by domestic violence;
- (4) whose application for supplemental security income is pending in the application or appeals process and who:
 - (a) meets the criteria of Paragraph (1) of this subsection; or
 - (b) was granted a waiver from the work requirement pursuant to Paragraph (1) of Subsection I of Section 27-2B-5 NMSA 1978 in the last twenty-four months; or
- (5) who otherwise qualifies for a hardship exception as defined by the department.

F. Pursuant to the federal act, the department shall not count a month of receipt of cash assistance or services toward the sixty-month durational limit if during the time of receipt the participant:

- (1) was a minor and was not the head of a household or married to the head of a household; or

(2) lived in Indian country, as defined in the federal act, if the most reliable data available with respect to the month indicate that at least fifty percent of the adults living in Indian country or in the village were not employed."

Section 4. Section 27-2B-8 NMSA 1978 (being Laws 1998, Chapter 8, Section 8 and Laws 1998, Chapter 9, Section 8, as amended by Laws 2001, Chapter 295, Section 5 and by Laws 2001, Chapter 326, Section 5) is amended to read:

"27-2B-8. RESOURCES.--

A. Liquid and nonliquid resources owned by the benefit group shall be counted in the eligibility determination.

B. A benefit group may at a maximum own the following resources:

- (1) two thousand dollars (\$2,000) in nonliquid resources;
- (2) one thousand five hundred dollars (\$1,500) in liquid resources;
- (3) the value of the principal residence of the participant;
- (4) the value of burial plots and funeral contracts for family

members;

(5) individual development accounts; and

(6) the value of work-related equipment up to one thousand dollars (\$1,000).

C. Vehicles owned by the benefit group shall not be considered in the determination of resources attributed to the benefit group."

Section 5. Section 27-2B-14 NMSA 1978 (being Laws 1998, Chapter 8, Section 14 and Laws 1998, Chapter 9, Section 14, as amended by Laws 2001, Chapter 295, Section 7 and by Laws 2001, Chapter 326, Section 7) is amended to read:

"27-2B-14. SANCTIONS.--

A. The department shall sanction a member of a benefit group for noncompliance with work requirements or child support requirements.

B. The sanction shall be applied at the following levels:

(1) twenty-five percent reduction of cash assistance for the first occurrence of noncompliance;

(2) fifty percent reduction of cash assistance for the second occurrence of noncompliance; and

(3) termination of cash assistance and ineligibility to reapply for six months for the third occurrence of noncompliance.

C. Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction. The participant shall have ten working days from the date a conciliation notice is mailed to contact the department to initiate the conciliation process. A participant who fails to initiate the conciliation process shall have a notice of adverse action mailed to him after the tenth working day following the date on which the conciliation notice is mailed. Participants who begin but do not complete the conciliation process shall be mailed a notice of adverse action thirty days from the date the original conciliation notice was mailed.

D. Reestablishing compliance shall allow full payment to resume.

E. Noncompliance with reporting requirements may subject a participant to other sanctions, except that an adult member of the benefit group shall not be sanctioned for the failure of a dependent child to attend school.

F. Effective October 1, 2001, the department shall not terminate the medicaid benefits of any member of a benefit group due to imposition of a sanction pursuant to the provisions of this section."

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

SENATE BILL 289, WITH EMERGENCY

CLAUSE, SIGNED APRIL 8, 2003

WITH CERTIFICATE OF CORRECTION

CHAPTER 312

CHAPTER 312, LAWS 2003

AN ACT

RELATING TO FUNDS; PROVIDING FOR AN ADDITIONAL TEMPORARY DISTRIBUTION FROM THE TOBACCO SETTLEMENT PERMANENT FUND; PROVIDING THAT THE TOBACCO SETTLEMENT PERMANENT FUND MAY, UNDER CERTAIN CIRCUMSTANCES, BE CONSIDERED A RESERVE FUND OF THE STATE; TEMPORARILY TRANSFERRING UNENCUMBERED AND UNEXPENDED BALANCES OF A CERTAIN FUND.

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

Section 1. Section 6-4-9 NMSA 1978 (being Laws 1999, Chapter 207, Section 1, as amended) is amended to read:

"6-4-9. TOBACCO SETTLEMENT PERMANENT FUND--INVESTMENT--DISTRIBUTION.--

A. The "tobacco settlement permanent fund" is created in the state treasury. The fund shall consist of money distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998 or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized by the model statute, Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement. Money in the fund shall be invested by the state investment officer as land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, except as provided in this section.

B. In fiscal years 2003 through 2006, a distribution shall be made from the tobacco settlement permanent fund to the general fund in an amount equal to one hundred percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year.

C. In fiscal year 2007 and in each fiscal year thereafter, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. In the event that the actual amount distributed to the tobacco

settlement program fund in a fiscal year is insufficient to meet appropriations from that fund for that fiscal year, the secretary of finance and administration shall proportionately reduce each appropriation accordingly.

D. The tobacco settlement permanent fund shall be considered a reserve fund of the state and, as a reserve fund, may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, in order to avoid an unconstitutional deficit, the legislature may authorize a transfer from the tobacco settlement permanent fund to the general fund but only in an amount necessary to meet general fund appropriations."

Section 2. TEMPORARY PROVISION--TRANSFER OF FUND BALANCES.--During fiscal year 2003, any unexpended or unencumbered balance of the tobacco settlement program fund shall be transferred to the general fund.

SENATE BILL 298, AS AMENDED

CHAPTER 313

CHAPTER 313, LAWS 2003

AN ACT

RELATING TO EDUCATION; ENACTING THE BRAILLE ACCESS ACT; REQUIRING INSTRUCTIONAL MATERIALS TO BE PROVIDED IN BRAILLE; PROVIDING A PRIVATE RIGHT OF ACTION; REPEALING THE BRAILLE LITERACY ACT.

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

Section 1. SHORT TITLE.--This act may be cited as the "Braille Access Act".

Section 2. PURPOSES.--The purposes of the Braille Access Act are to:

- A. enhance literacy;
- B. increase braille proficiency;

C. improve employability for blind and visually impaired students; and

D. reduce the cost of acquiring braille and other alternate accessible format materials.

Section 3. DEFINITIONS.--As used in the Braille Access Act:

A. "alternate accessible format" means one of several alternatives to traditional print, including braille, large print and computer text files;

B. "braille" means the tactile system of reading and writing used by persons who are blind and visually impaired, as defined by the braille authority of North America;

C. "department" means the state department of public education;

D. "educational institution" means a public school or public post-secondary educational institution;

E. "instructional materials" means textbooks, workbooks, teacher manuals or editions, blackline masters, transparencies, test packets, software, CD-ROMs, videotapes and cassette tapes;

F. "structural integrity" means all of the printed instructional materials, including the text of the material, sidebars, table of contents, chapter headings and subheadings, footnotes, indexes, glossaries and bibliographies. "Structural integrity" need not include nontextual elements such as pictures, illustrations, graphs or charts, though the publisher should include a brief textual description of any such nontextual element when it is practical to do so and mention of the nontextual element when a description is not practical;

G. "student" means a blind or visually handicapped person accepted, enrolled or attending an educational institution; and

H. "textbook" means a book, a system of instructional materials or a combination of a book and supplementary instructional material that conveys information to the student or otherwise contributes to the learning process, including electronic textbooks.

Section 4. INSTRUCTIONAL MATERIALS.--

A. A publisher that prints instructional materials for students attending educational institutions shall provide, upon request of the educational institution, any printed instructional materials in an electronic format mutually agreed upon by the publisher and the educational institution.

B. The formats used shall include any nationally recognized standard for conversion of publishing files to braille, such as DAISY/NISO XML.

C. If no nationally recognized standard is appropriate, as determined by the department, publishers shall provide the file in another mutually agreed upon computer or electronic format, such as Microsoft Word, ASCII text or LaTeX.

D. The educational institution may use the electronic version of printed instructional materials that is provided pursuant to the Braille Access Act to transcribe or arrange for the transcription of the printed instructional materials into an alternate accessible format. The educational institution has the right to provide the alternate accessible format copy of the printed instructional materials to students as permitted by federal copyright law, including the provisions of Section 316 of Public Law 104-197.

E. The electronic version of the printed instructional materials shall:

(1) comply with any applicable federal standard;

(2) otherwise maintain the structural integrity of the printed instructional materials; and

(3) include the latest corrections and revisions of the printed instructional materials as necessary.

F. The publisher shall provide the electronic versions of the printed instructional materials to the educational institution at no additional cost and within ten business days after receipt of a written request that does all of the following:

(1) certifies that the educational institution or the student has purchased the printed instructional materials for use by the student;

(2) certifies that the student is unable to use printed instructional materials;

(3) certifies that the printed instructional materials are for use by the student in connection with a course at the educational institution; and

(4) is signed by the:

(a) person responsible for providing educational services pursuant to the federal Individuals with Disabilities Education Act;

(b) coordinator of services for students with disabilities at the educational institution;

(c) person responsible for monitoring the educational institution's compliance with the federal Americans with Disabilities Act of 1990 or Section 504 of the federal Rehabilitation Act of 1973; or

(d) vocational rehabilitation counselor responsible for providing services under an individualized plan for employment created pursuant to the federal Rehabilitation Act of 1973.

G. A publisher may require that the request include a statement signed by the educational institution agreeing that:

(1) the electronic copy of the printed instructional materials will be used solely for the student's educational purposes; and

(2) the student or educational institution will not copy, publish or in any other way distribute the printed instructional materials for use by anyone other than the original student, except that the educational institution may provide the instructional materials to another qualifying student who has signed a statement agreeing to the terms contained in this section and unless it is otherwise permitted by federal law.

H. A publisher who manufactures instructional materials using any type of video or audio format, CD ROM or other digital format for students attending educational institutions shall, to the maximum extent practicable, upon request, provide an accessible version of the instructional materials or, if an accessible version is not available, provide other electronic versions of the instructional materials, subject to the same conditions and limitations for printed instructional materials.

I. Nothing in the Braille Access Act shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright pursuant to applicable federal copyright law.

Section 5. GUIDELINES.--The department, in consultation with representatives from educational institutions and publishers, shall adopt guidelines consistent with the Braille Access Act for the implementation and administration of that act. The guidelines shall address all of the following:

A. the designation of instructional materials deemed required or essential to student success;

B. definitions clarifying what constitutes nontextual mathematics or science instructional materials that use mathematical notations and clarifying a publisher's obligations in regard to such instructional materials;

C. definitions clarifying what is required to maintain structural integrity and requirements for textual descriptions of pictures, illustrations, graphs and charts;

D. requirements for approval and procurement of textbooks that are available in a computer or electronic format and procedures for suspension of publishers from the procurement process if the publisher fails to comply with the provisions of the Braille Access Act;

E. an administrative complaint process to be followed for complaints against a publisher;

F. definitions clarifying what constitutes "educational purposes"; and

G. any other matters the department deems necessary or appropriate to carry out the purposes of the Braille Access Act.

Section 6. PRIVATE RIGHT OF ACTION.--A student who contends that there has been a violation of the Braille Access Act has the right to pursue a private right of action in the district court if the student has exhausted the administrative complaint process. Organizations representing the interests of persons who are blind or who have other disabilities shall have standing to assert any right afforded in the Braille Access Act and shall be subject to the same requirements and terms as a student. Should the student or organization prevail in a lawsuit, the student or organization shall be entitled to injunctive relief and reasonable attorney fees and costs. No other type of monetary damages shall be available.

Section 7. REPEAL.--Sections 22-15-21 through 22-15-25 NMSA 1978 (being Laws 1993, Chapter 156, Sections 1 through 5) are repealed.

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 301, AS AMENDED

CHAPTER 314

CHAPTER 314, LAWS 2003

AN ACT

RELATING TO HEALTH; DIRECTING THE HUMAN SERVICES DEPARTMENT TO INITIATE THE STUDIES, ANALYSES AND PILOT PROJECTS RECOMMENDATIONS OF THE MEDICAID REFORM COMMITTEE.

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

Section 1. STUDIES--ANALYSES--PILOT PROJECTS.--

A. The human services department shall, to the extent possible, carry out the studies, analyses and pilot projects recommended by the medicaid reform committee that was established pursuant to Laws 2002, Chapter 96 as follows:

(1) conduct a cost-benefit analysis of the carve out of the pharmacy drug benefit from the managed care system to a centralized administration of the benefit for the managed care system and the fee-for-service system;

(2) conduct:

(a) a comprehensive feasibility study and cost-benefit analysis of the replacement of the managed care system required pursuant to Section 27-2-12.6 NMSA 1978 with a statewide primary care case management model that assigns responsibility for care coordination to primary care providers and includes a medical and utilization review component designed to assist primary care providers in case management and that reimburses providers for these additional responsibilities and establish an ongoing evaluation of the primary care case management model's cost-effectiveness; or

(b) a pilot project for a primary care case management model for the fee-for-service population, or a selected subpopulation, that: 1) assigns responsibility for care coordination to primary care providers; 2) includes a medical and utilization review component designed to assist primary care providers in case management; and 3) reimburses providers for these additional responsibilities and evaluates the effectiveness of the pilot project;

(3) conduct:

(a) a cost-benefit analysis and comparison of nonemergency transportation services under a state-managed model, brokerage models and other models; or

(b) conduct a pilot project in a rural area and in an urban area for nonemergency transportation services for selected medicaid recipients in the fee-for-service system;

(4) complete the analysis necessary for the global funding waiver currently in process in the department and review cost and effectiveness projections to determine whether the department should proceed with a request to the federal government for the waiver;

(5) conduct a cost-benefit analysis and comparison of the personal care option's consumer-directed and consumer-delegated care components and evaluate the respective components for:

(a) cost-effectiveness as an alternative to or intermediate step before institutional care;

(b) projected long-term costs as currently operated;

(c) need for oversight to ensure appropriate care for recipients and prevention of fraud or abuse;

(d) the appropriateness of the eligibility criteria; and

(e) anticipated savings, if any, with greater use of the consumer-directed or consumer-delegated model;

(6) identify options for revising, limiting, reducing or eliminating medicaid services, while ensuring that the most vulnerable medicaid recipients are not adversely affected, and determine the feasibility and advisability of a federal waiver to implement proposed medicaid service changes;

(7) conduct an external analysis of selected medicaid prescription drug use in New Mexico with respect to trends in prescribing, utilization and costs and potential cost-savings initiatives;

(8) determine the feasibility of a federal waiver to include in the medicaid program persons currently served solely with state general funds through the health care programs and services of other agencies, including the department of health, the children, youth and families department and the state agency on aging;

(9) work with counties to determine the feasibility of a federal waiver to:

(a) include in the medicaid program persons who would qualify under the provisions of the Indigent Hospital and County Health Care Act;

(b) ensure that counties, in conjunction with the department, retain sufficient flexibility and accountability for the use of the county indigent hospital claims fund; and

(c) ensure that county funds for indigents not covered under the waiver are not diminished through its implementation; and

(10) work toward a self-directed care option in the disabled and elderly and the developmentally disabled medicaid waiver programs, subject to appropriation and availability of federal and state funds.

B. The department shall, to the extent possible, combine or coordinate similar initiatives in this section or in other medicaid reform committee recommendations to avoid duplication or conflict.

C. The department shall, to the extent permissible, apply for public and private grants or claim federal matching funds.

D. If the funding is insufficient for all the initiatives in this section, the department shall prioritize the initiatives in conjunction with the appropriate legislative interim committee.

SENATE BILL 332, AS AMENDED

CHAPTER 315

CHAPTER 315, LAWS 2003

AN ACT

RELATING TO HEALTH; DIRECTING THE HUMAN SERVICES DEPARTMENT TO IMPLEMENT PROGRAM CHANGE RECOMMENDATIONS OF THE MEDICAID REFORM COMMITTEE; ENACTING A NEW SECTION OF THE PUBLIC ASSISTANCE ACT; DECLARING AN EMERGENCY.

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

Section 1. A new section of the Public Assistance Act is enacted to read:

"MEDICAID REFORM--PROGRAM CHANGES.--

A. The department shall carry out the medicaid program changes as recommended by the medicaid reform committee that was established pursuant to Laws 2002, Chapter 96, as follows:

(1) develop a uniform preferred drug list for the state's medicaid prescription drug benefit and integrate all medicaid programs or services administered by the medical assistance division of the department to its use;

(2) work with other agencies to integrate the use of the uniform preferred drug list as described in Paragraph (1) of this subsection to other health care programs, including the department of health, the publicly funded health care agencies of the Health Care Purchasing Act, state agencies that purchase prescription drugs and other public or private purchasers of prescription drugs with whom the state can enter into an agreement for the use of a uniform preferred drug list;

(3) identify entities that are eligible to participate in the federal drug pricing program under Section 340b of the federal Public Health Service Act. The department shall make a reasonable effort to assist the eligible entities to enroll in the program and to purchase prescription drugs under the federal drug pricing program. The department shall ensure that entities enrolled in the federal drug pricing program are reimbursed for drugs purchased for use by medicaid recipients at acquisition cost and that the purchases are not included in a rebate program;

(4) work toward the development of a prescription drug purchasing cooperative to combine the buying power of the state's medicaid program, the publicly funded health care agencies of the Health Care Purchasing Act, the department of health, the corrections department and other potential public or private purchasers, including other states, to obtain the best price for prescription drugs. The administration and price negotiation of the prescription drug purchasing cooperative shall be consolidated under a single agency as determined by the governor;

(5) in consultation and collaboration with the department of health and medicaid providers and contractors, develop a program to expand the use of community health promoters. The community health promoters shall assist selected medicaid recipients in understanding the requirements of the medicaid program; ensuring that recipients are seeking and receiving primary and preventive health care services; following health care providers' orders or recommendations for medication, diet and exercise; and keeping appointments for examinations and diagnostic examinations;

(6) require that the managed care organizations provide or strengthen disease management programs for medical assistance recipients through closer coordination with and assistance to primary care and safety net providers and seek to adopt uniform key health status indicators. The department shall ensure that the managed care organizations make reasonable efforts and actively seek the expanded participation in disease management programs of primary care providers and other health care providers, particularly in underserved areas;

(7) ensure that case management services are provided to assist medicaid recipients in accessing needed medical, social and other services. The

department shall require that managed care organizations provide or strengthen case management services through closer coordination with and assistance to primary care and safety net providers. The case management services shall be targeted to specific classes of individuals or individuals in specific areas where medicaid costs or utilization demonstrate a lack of health care management or coordination;

(8) design a pilot disease management program for the fee-for-service population. The department shall ensure that the disease management program is based on key health status indicators, accountability for clinical benefits and demonstrated cost savings;

(9) continue the personal care option with increased consumer awareness of consumer-directed services as a choice in addition to consumer-delegated services;

(10) expand the program of all-inclusive care for the elderly to a rural or urban area with a population less than four hundred thousand to the extent resources are available;

(11) in conjunction with the department of health, the children, youth and families department and the state agency on aging, coordinate the state's long-term care services, including health and social services and assessment and information and referral development for recipients through an appropriate transition process;

(12) develop a fraud and abuse detection and recovery plan that ensures cooperation, sharing of information and general collaboration among the medicaid fraud control unit of the attorney general, the managed care organizations, medicaid providers, consumer groups and the department to identify, prevent or recover medicaid reimbursement obtained through fraudulent or inappropriate means;

(13) work with other agencies to identify other state-funded health care programs and services that may be reimbursable under medicaid and to ensure that the programs and services meet the requirements for federal funding;

(14) in conjunction with Indian health service facilities or tribally operated health care facilities pursuant to Section 638 of the Indian Self-Determination and Education Assistance Act, medicaid managed care organizations and medicaid providers, ensure that Indian health service facilities and tribally operated facilities are utilized to the extent possible for services that are eligible for a one hundred percent federal medical assistance percentage match;

(15) review the payment methodologies for eligible federally qualified health centers that provide the maximum allowable medicaid reimbursement;

(16) ensure that primary care clinics engaged in medicaid-related outreach and enrollment activities are appropriately reimbursed under medicaid;

(17) assess a premium on selected medicaid recipients who meet criteria as determined by the department;

(18) assess tiered co-payments on emergency room services in amounts comparable to those assessed for the same services by commercial health insurers or health maintenance organizations, except that no co-payment shall be imposed if the patient is admitted as a hospital inpatient as a result of the emergency room evaluation. The emergency room provider shall make a good faith effort to collect the co-payment from the patient. The co-payment shall apply to medicaid recipients in the managed care system or the fee-for-service system;

(19) assess tiered co-payments on selected higher-cost prescription drugs to provide incentives for greater use of generic prescription drugs when there is a generic or lower-cost equivalent available;

(20) assess a co-payment on the purchase of selected prescription drugs that are not on the uniform preferred drug list as described in Paragraph (1) of this subsection;

(21) consider the impact of cost-sharing requirements on medicaid recipients' access to health care. The department shall ensure that premiums and co-payments described in Paragraphs (17) through (20) of this subsection are in compliance with federal requirements;

(22) provide vision benefits for adults that do not exceed one routine eye exam and one set of corrective lenses in a twelve-month period or more than one frame for corrective lenses in a twenty-four-month period, except as medically warranted;

(23) review its prescription drug policies to ensure that pharmacists have the flexibility for and are not discouraged from using generic prescription drugs when there is a generic or lower-cost equivalent available; and

(24) review its nursing home eligibility criteria to ensure that consideration of income, trusts and other assets are the maximum permissible under federal law.

B. The department shall, to the extent possible, combine or coordinate similar initiatives in this section or in other medicaid reform committee recommendations to avoid duplication or conflict. The department shall give preference to those initiatives that provide significant cost savings while protecting the quality and access of medicaid recipients' health care services.

C. The department shall ensure compliance with federal requirements for implementation of the medicaid reform committee's recommendations. The department shall request a federal waiver as may be necessary to comply with federal requirements.

D. As used in this section:

(1) "case management" means services that ensure care coordination among the patient, the primary care provider and other providers involved in addressing the patient's health care needs, including care plan development, communication and monitoring;

(2) "community health promoters" means persons trained to promote health and health care access among low-income persons and medically underserved communities;

(3) "disease management" means health care services, including patient education, monitoring, data collection and reporting, designed to improve health outcomes of medicaid recipients in defined populations with selected chronic diseases;

(4) "drug purchasing cooperative" means a collaborative procurement process designed to secure prescription drugs at the most advantageous prices and terms;

(5) "fee-for-service" means a traditional method of paying for health care services under which providers are paid for each service rendered;

(6) "managed care system" refers to the program for medicaid recipients required by Section 27-2-12.6 NMSA 1978;

(7) "medicaid" means the joint federal-state health coverage program pursuant to Title 19 or Title 21 of the federal act;

(8) "preferred drug list" means a list of prescription drugs for which the state will make payment without prior authorization or additional charge to the medicaid recipient and that is based on clinical evidence for efficacy and meets the department's cost-effectiveness criteria;

(9) "primary care clinics" means facilities that provide the first level of basic or general health care for an individual's health needs, including diagnostic and treatment services, and includes federally qualified health centers or federally qualified health center look-alikes as defined in Section 1905 of the federal act and designated by the federal department of health and human services, community-based health centers, rural health clinics and other eligible programs under the Rural Primary Health Care Act;

(10) "primary care provider" means a health care practitioner acting within the scope of his license who provides the first level of basic or general health care for a person's health needs, including diagnostic and treatment services, initiates referrals to other health care practitioners and maintains the continuity of care when appropriate; and

(11) "waiver" means the authority granted by the secretary of the federal department of health and human services, upon the request of the state, that allows exceptions to the state medicaid plan requirements and allows a state to implement innovative programs or activities."

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

SENATE BILL 338, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 316

CHAPTER 316, LAWS 2003

AN ACT

RELATING TO CHILD CARE; CREATING THE CHILD CARE FACILITY REVOLVING LOAN FUND; AUTHORIZING LOANS FOR LICENSED CHILD CARE FACILITIES TO MAKE NECESSARY IMPROVEMENTS FOR HEALTH AND SAFETY; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE.--This act may be cited as the "Child Care Facility Loan Act".

Section 2. PURPOSE.--The purpose of the Child Care Facility Loan Act is to support the physical improvement, repair, safety and maintenance of licensed child care facilities throughout New Mexico by providing long-term, low-interest funding through a revolving loan fund so as to ensure availability of healthy and safe teaching environments.

Section 3. DEFINITIONS.--As used in the Child Care Facility Loan Act:

A. "department" means the children, youth and families department;

B. "facility" means a child care facility operated by a provider, including both family home-based and center-based programs, licensed by the department to provide care to infants, toddlers and children;

C. "fund" means the child care facility revolving loan fund; and

D. "provider" means a person licensed by the department to provide child care to infants, toddlers and children pursuant to Section 9-2A-8 NMSA 1978.

Section 4. FUND CREATED--ADMINISTRATION.--

A. The "child care facility revolving loan fund" is created in the New Mexico finance authority to provide low-interest, long-term loans to providers to make health and safety improvements in their facilities. The fund shall consist of appropriations, gifts, grants and donations to the fund, which shall be invested as provided in the New Mexico Finance Authority Act. Money in the fund shall not revert and is appropriated to the department, which shall utilize the fund for the purposes of the Child Care Facility Loan Act. Administrative costs of the authority may be paid from the fund. Expenditures from the fund for loans to providers shall be made upon warrants of the secretary of finance and administration pursuant to vouchers signed by the secretary of children, youth and families or his authorized representative.

B. Money in the fund shall be used to make loans to providers that demonstrate the need to make health and safety improvements, including space expansion, in order to maintain an adequate and appropriate environment for their clients. Loans from the fund are to be made at the lowest legally permissible interest rates for the longest amount of time in order to allow the providers the maximum opportunity to maintain the business while repaying the loan.

C. No more than twenty percent of the fund may be loaned to a single provider in a single loan. A provider that has received a loan from the fund in the immediately preceding five years or that has not completed repayment of a previous loan from the fund is ineligible for a new loan. The department shall give priority for loans to facilities of providers that serve proportionately high numbers of state-subsidized clients and low-income families.

D. The department, in conjunction with the New Mexico finance authority, shall adopt rules to administer and implement the Child Care Facility Loan Act. The rules shall become effective when filed in accordance with the State Rules Act.

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 358, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 317

CHAPTER 317, LAWS 2003

AN ACT

RELATING TO PUBLIC ASSISTANCE; ENACTING THE EDUCATION WORKS ACT;
DECLARING AN EMERGENCY.

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

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

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

A. "benefit group" means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step- or adopted siblings living with the dependent child's parent or relative within the fifth degree of consanguinity and the parent with whom the children live;

B. "cash assistance" means cash payments funded by maintenance of effort funds appropriated to the department in compliance with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or its successor acts, and distributed by the department pursuant to the Education Works Act;

C. "department" means the human services department;

D. "dependent child" means a natural, adopted step-child or ward who is:

(1) seventeen years of age or younger;

(2) eighteen years of age and is enrolled in high school; or

(3) between eighteen and twenty-two years of age and is receiving special education services regulated by the state board of education;

E. "director" means the director of the income support division of the department;

F. "earned income" means cash or payment in kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services;

G. "education works program" means the cash assistance, activities and services available to a recipient pursuant to the Education Works Act;

H. "federal act" means the federal Social Security Act and rules promulgated pursuant to the Social Security Act;

I. "federal poverty guidelines" means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services;

J. "parent" means natural parent, adoptive parent, stepparent or legal guardian;

K. "person" means an individual;

L. "recipient" means a person who receives cash assistance or services or a member of a benefit group who has reached the age of majority;

M. "secretary" means the secretary of human services;

N. "services" means child-care assistance; payment for education- or employment-related transportation costs; job search assistance; employment counseling; employment, education and job training placement; an annual payment for education-related costs; case management; or other activities whose purpose is to assist transition into employment;

O. "unearned income" means old age, survivors and disability insurance; railroad retirement benefits; veterans administration compensation or pension; military retirement; pensions, annuities and retirement benefits; lodge or fraternal benefits; shared shelter payments; settlement payments; individual Indian money; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income; and

P. "vehicle" means a conveyance for the transporting of persons to or from employment or education for the activities of daily living or for the transportation of

goods; "vehicle" does not include boats, trailers or mobile homes used as a principal place of residence.

Section 3. APPLICATION--RESOURCE PLANNING SESSION-- INDIVIDUAL EDUCATION PLAN--REVIEW PERIODS.--

A. Application for cash assistance or services shall be made to the department's county office in the county or district in which an applicant resides. The application shall be in writing or reduced to writing in the manner and on the form prescribed by the department. The application shall be made under oath by an applicant with whom a dependent child resides and shall contain a statement of the age of the child, residence, a complete statement of the amount of property in which the applicant has an interest, a statement of all income that he and other benefit group members have at the time of the filing of the application and other information required by the department.

B. Application for expedited food stamps shall be made to the department's county office in the county or district in which an applicant resides. The department shall process the application for expedited food stamps within twenty-four hours after the application is made.

C. At the time of application for cash assistance and services, an applicant shall identify everyone who is to be counted in the benefit group. Once an application is approved, the recipient shall advise the department if there are any changes in the membership of the benefit group.

D. No later than thirty days after an application is filed, the department shall make referrals and act on the application.

E. No later than five days after an application is approved, the department shall provide reimbursement for child care.

F. Whenever the department receives an application for assistance, a verification and record of the applicant's circumstances shall promptly be made to ascertain the facts supporting the application and to obtain other information required by the department. The verification may include a visit to the home of the applicant, as long as the department gives adequate prior notice of the visit to the applicant.

G. The department shall work with the recipient to develop an individual educational plan that:

(1) sets forth the educational goal for the recipient, identifies barriers to that goal and identifies the steps to be taken by the recipient to achieve that goal;

(2) describes the services the department may provide so that the recipient may complete his educational goal; and

(3) provides for meetings with the recipient every six months or at the end of each academic term to review the eligibility of the benefit group and to review and revise his individual education plan.

H. The recipient and a representative of the department shall sign the recipient's individual education plan. The department shall:

(1) not allow a recipient to decline to participate in developing an individual education plan;

(2) not waive the requirement that a recipient develop an individual education plan; and

(3) emphasize the importance of the individual education plan to the recipient.

Section 4. EDUCATION WORKS PROGRAM--ELIGIBILITY-- RESTRICTIONS--REQUIREMENTS.--

A. A person is eligible to receive education works services or cash assistance if the person demonstrates that:

(1) at the time of the application, the person does not have a bachelor's degree;

(2) the person has been accepted or has been determined to be eligible to enroll in a two- or four-year post-secondary degree program; and

(3) the degree the person will receive will increase his ability to engage in full-time paid employment.

B. A recipient shall not receive cash assistance funded by the temporary assistance for needy families block grant during the period in which the recipient is receiving cash assistance pursuant to the Education Works Act.

C. A recipient shall apply for all financial aid available from the post-secondary educational institution that the recipient attends.

D. During the twenty-four months of participation in the education works program, a recipient shall engage in at least twenty hours per week of class time, studying, work, work study or volunteering. The department shall assume that a recipient spends one and one-half hours studying for every hour of class time.

E. A recipient may participate in the education works program for no more than twenty-four months, except that a recipient may participate in the education works program for one additional academic term following the twenty-four month participation limit if doing so will result in the recipient earning a degree.

F. The number of recipients enrolled in the education works program is limited to the number of recipients who can be served by the funds available.

G. A recipient may earn only one degree through the education works program.

H. For purposes of this section, "work" means work study, training-related practicums, internships, paid employment, volunteering or any other activity approved by the department.

Section 5. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of state funds.

B. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:

- (1) medicaid;
- (2) food stamps;
- (3) government-subsidized foster care payments if the child for whom the payment is received is also excluded from the benefit group;
- (4) supplemental security income;
- (5) government-subsidized housing or housing payments;
- (6) federally excluded income;
- (7) educational payments made directly to an educational institution;
- (8) government-subsidized child care;
- (9) earned income that belongs to a person seventeen years of age or younger who is not the head of household;
- (10) fifty dollars (\$50.00) of collected child support passed through to the recipient by the child support enforcement division of the department; and

(11) other income sources as determined by the department.

C. The total countable gross earned and unearned income of the benefit group shall not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

D. For a benefit group to be eligible to participate:

(1) earned and unearned income that belongs to the benefit group shall not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group; and

(2) earned and unearned income that belongs to the benefit group shall not equal or exceed the financial standard of need after applying the disregards set out in Paragraphs (1) through (4) of Subsection E of this section.

E. Subject to the availability of state funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned income and then subtracting that amount from the benefit group's financial standard of need:

(1) for the first two years of receiving cash assistance or services, if a recipient works over the work requirement rate set by the department pursuant to the Education Works Act, one hundred percent of the income earned by the recipient beyond that rate;

(2) for the first two years of receiving cash assistance or services, for a two-parent benefit group, one hundred percent of income earned by each recipient beyond the work requirement rate set by the department;

(3) one hundred twenty-five dollars (\$125) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred twenty-five dollars (\$225) of monthly earned income and one-half of the remainder for each parent;

(4) monthly payments made for child care at a maximum of two hundred dollars (\$200) for a child under two years of age and a maximum of one hundred seventy-five dollars (\$175) for a child two years of age or older;

(5) costs of self-employment income; and

(6) business expenses.

F. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group.

Section 6. RESOURCES.--

A. Liquid and nonliquid resources owned by the benefit group shall be counted in the eligibility determination.

B. A benefit group may at a maximum own the following resources:

- (1) two thousand dollars (\$2,000) in nonliquid resources;
- (2) one thousand five hundred dollars (\$1,500) in liquid resources;
- (3) the value of the principal residence of the recipient;
- (4) the value of burial plots and funeral contracts for family members;
- (5) individual development accounts; and
- (6) the value of work-related equipment up to one thousand dollars (\$1,000).

C. Vehicles owned by the benefit group shall not be considered in the determination of resources attributed to the benefit group.

Section 7. INELIGIBILITY.--

A. The following are ineligible to be members of a benefit group:

- (1) an inmate or patient of a nonmedical institution;
- (2) a person who, in the two years preceding application, assigned or transferred real property unless he:
 - (a) received or receives a reasonable return;
 - (b) attempted to or attempts to receive a reasonable return;or
 - (c) attempted to or attempts to regain title to the real property;
- (3) a minor unmarried parent who has not successfully completed a high school education and who has a child at least twelve weeks of age in his care unless the minor unmarried parent:

(a) participates in educational activities directed toward the attainment of a high school diploma or its equivalent; or

(b) participates in an alternative educational or training program that has been approved by the department;

(4) a minor unmarried parent who is not residing in a place of residence maintained by his parent, legal guardian or other adult relative unless the department:

(a) refers or locates the minor unmarried parent to a second-chance home, maternity home or other appropriate adult-supervised supportive living arrangement and takes into account the needs and concerns of the minor unmarried parent;

(b) determines that the minor unmarried parent has no parent, legal guardian or other appropriate adult relative who is living or whose whereabouts are known;

(c) determines that a minor unmarried parent is not allowed to live in the home of a living parent, legal guardian or other appropriate adult relative;

(d) determines that the minor unmarried parent is or has been subjected to serious physical or emotional harm, sexual abuse or exploitation in the home of the parent, legal guardian or other appropriate adult relative;

(e) finds that substantial evidence exists of an act or a failure to act that presents an imminent or serious harm to the minor unmarried parent and the child of the minor unmarried parent if they live in the same residence with the parent, legal guardian or other appropriate adult relative; or

(f) determines that it is in the best interest of the unmarried minor parent to waive this requirement;

(5) a minor child who has been absent or is expected to be absent from the home for forty-five days;

(6) a person who does not provide a social security number or who refuses to apply for one;

(7) a person who is not a resident of New Mexico;

(8) a person who fraudulently misrepresented residency to receive assistance in two or more states simultaneously, except that the person shall be ineligible only for ten years;

(9) a person who is a fleeing felon or a probation and parole violator;

(10) a person concurrently receiving supplemental security income, tribal temporary assistance for needy families or bureau of Indian affairs general assistance; and

(11) unless he demonstrates good cause, a parent who does not assist the department in establishing paternity or obtaining child support or who does not assign support rights to New Mexico as required pursuant to the federal act.

B. For the purposes of this section, "second-chance home" means an entity that provides a supportive and supervised living arrangement to a minor unmarried parent where the minor unmarried parent is required to learn parenting skills, including child development, family budgeting, health and nutrition and other skills to promote long-term economic independence and the well-being of children.

C. Pursuant to the authorization provided to the states in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. Section 862a(d)(1)(A), New Mexico elects to exempt all persons domiciled in the state from application of 21 U.S.C. Section 862a(a).

Section 8. FAIR HEARING--REVIEW AND APPEAL.--

A. A recipient may request a hearing if:

(1) an application is not acted on within a reasonable time after the filing of the application;

(2) an application is denied in whole or in part; or

(3) the cash assistance or services are modified, terminated or not provided.

B. The department shall notify the recipient of his rights under this section.

C. The department shall by rule establish procedures for the filing of a request for a hearing and the time limits within which a request may be filed; provided, however, that the department may grant reasonable extensions of the time limits. If the request is filed in a timely manner, cash assistance and services shall be provided until the appeal is resolved. If the request is not filed within the specified time for appeal or within whatever extension the department may grant, the department action shall be final. Upon receipt of a timely request, the department shall give the recipient reasonable notice of an opportunity for a fair hearing in accordance with the rules of the department.

D. The hearing shall be conducted by a hearing officer designated by the director. The powers of the hearing officer shall include administering oaths or affirmations to witnesses called to testify, taking testimony, examining witnesses, admitting or excluding evidence and reopening a hearing to receive additional evidence. The technical rules of evidence and the rules of civil procedure shall not apply. The hearing shall be conducted so that the contentions or defenses of each party to the hearing are amply and fairly presented. Each party may be represented by counsel or other representative and may conduct cross-examination. Oral or documentary evidence may be received, but the hearing officer may exclude irrelevant, immaterial or unduly repetitious evidence.

E. The director shall review the record of the proceedings and shall make his decision on the record. The recipient or his representative shall be notified in writing of the director's decision and the reasons for the decision. The written notice shall inform the recipient of his right to judicial review. The department shall be responsible for ensuring that the decision is enforced.

F. Within thirty days after receiving written notice of the decision of the director, a recipient may file a notice of appeal with the court of appeals together with a copy of the notice of the decision. The clerk of the court shall transmit a copy of the notice of appeal to the director.

G. The filing of a notice of appeal shall not stay the enforcement of the decision of the director, but the department may grant, or the court upon motion and good cause shown may order, a stay.

H. Within twenty days after receipt of the notice of appeal, the department shall file with the clerk of the court three copies and furnish to the appellant one copy of the written transcript of the record of the proceedings.

I. If, before the date set for argument, application is made to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and there was good reason for not presenting it in the hearing, the court may order the additional evidence taken before the department. If the application to present additional evidence is filed by the department and is approved by the court, the department's decision that is being appealed shall be stayed. The director may modify his findings and decision by reason of the additional evidence and shall file with the court a transcript of the additional evidence together with any modified or new findings or decision.

J. The review of the court shall be made upon the decision and the record of the proceedings.

K. The court shall set aside a decision and order of the director only if the decision is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record as a whole;

or

(3) otherwise not in accordance with law.

L. The department shall not authorize or allow expenditures in excess of the amounts previously appropriated by the legislature.

Section 9. SATISFACTORY PARTICIPATION.--

A. To maintain satisfactory participation in the education works program, a recipient shall be a full-time student as defined by the school that the recipient attends.

B. A recipient may demonstrate good cause for failure to maintain satisfactory participation in the education works program, and must work with the department to address the barrier, in any month of participation for the following reasons:

(1) extended illness or injury of the recipient;

(2) the recipient is the primary caretaker for a special needs child or an ill or aging parent; or

(3) the recipient has been assessed to have a learning disability or a mental or physical health problem.

C. If a recipient falls below the academic standard of the school in one academic term, he shall be placed on probationary status for one academic term to improve his grades. If a recipient's overall grade point average falls below 2.0 based on a four-point system, the department shall place him on probation for a maximum of two academic terms to allow him to bring up his overall grade point average.

D. A recipient shall:

(1) attend classes as scheduled and participate as required by the standard of the school;

(2) report to the department a change that may affect the benefit group's eligibility for or anything that may affect the recipients ability to participate in the education works program;

(3) provide the department with copies of any financial aid award letters; and

(4) provide the department with copies of his grades as they become available.

E. If a recipient does not comply with Subsection C of this section or with the provisions of the Education Works Act, the department may require the recipient to apply for public assistance pursuant to the New Mexico Works Act. This decision shall be made in writing and the recipient shall have the opportunity to appeal the decision.

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

SENATE BILL 360, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 318

CHAPTER 318, LAWS 2003

AN ACT

RELATING TO CORPORATIONS; AMENDING INCORPORATION PROCEDURES.

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

Section 1. Section 3-29-16 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-28-16, as amended) is amended to read:

"3-29-16. CERTIFICATE OF ASSOCIATION.--

A. The members of an association shall execute a certificate setting forth:

- (1) the name of the association;
- (2) the name of the incorporators;
- (3) the location of the principal office of the association in this state;
- (4) the objects and purposes of the association;

(5) the address of the initial registered office of the association and the name of the initial registered agent at that address;

(6) the amount of capital stock and number and denomination of the shares or, if the incorporators do not desire to issue shares of stock, the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its work and for its necessary expenses;

(7) the period, if any, delimited for the duration of the association;
and

(8) the number and manner of electing the board of directors of the association.

B. Pursuant to the registered agent requirement of Paragraph (5) of Subsection A of this section, there shall be attached to the certificate a statement executed by the registered agent in which the agent acknowledges acceptance of the appointment by the filing association, if the agent is an individual, or a statement executed by an authorized officer of a corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent, if the agent is a corporation.

C. The certificate or any amendment thereof made as provided in Section 3-29-19 NMSA 1978 may also contain provisions not inconsistent with the Sanitary Projects Act or other law of this state that the incorporators may choose to insert for the regulation and conduct of the business and affairs of the association. There shall accompany each certificate a list of the names of all members of the association, the list to also show the total number of members of the association and the total number of dwelling units that can be served if the project is completed."

Section 2. Section 53-2-1 NMSA 1978 (being Laws 1975, Chapter 65, Section 1, as amended) is amended to read:

"53-2-1. FEES OF PUBLIC REGULATION COMMISSION.--

A. For filing documents and issuing certificates, the public regulation commission shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, a fee of one dollar (\$1.00) for each one thousand shares of the total amount of authorized shares, but in no case less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000);

(2) filing articles of amendment and issuing a certificate of amendment increasing the total amount of authorized shares or filing restated articles of incorporation and issuing a restated certificate of incorporation increasing the total

amount of authorized shares, a fee equal to the difference between the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares, including the proposed increase, and the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares, excluding the proposed increase, but in no case less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000);

(3) filing articles of amendment and issuing a certificate of amendment not involving an increase in the total amount of authorized shares or filing restated articles of incorporation and issuing a restated certificate of incorporation not involving an increase in the total amount of authorized shares, a fee of one hundred dollars (\$100);

(4) filing articles of merger, consolidation or exchange and issuing a certificate of merger or consolidation or exchange, a fee equal to the difference between the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares in the articles of merger or consolidation in excess of the total amount of authorized shares of the corporations merged or consolidated or upon the amount of the shares exchanged, but in no case less than two hundred dollars (\$200) or more than one thousand dollars (\$1,000);

(5) filing an application to reserve a corporate name or filing a notice of transfer of a reserved corporate name, a fee of twenty-five dollars (\$25.00);

(6) filing a statement of a change of address of the registered office or change of the registered agent, or both, a fee of twenty-five dollars (\$25.00);

(7) filing an agent's statement of change of address of registered agent for each affected corporation, a fee of twenty-five dollars (\$25.00);

(8) filing a statement of the establishment of a series of shares, a fee of one hundred dollars (\$100);

(9) filing a statement of reduction of authorized shares, a fee of one hundred dollars (\$100);

(10) filing a statement of intent to dissolve, a statement of revocation of voluntary dissolution proceedings or articles of dissolution, a fee of fifty dollars (\$50.00);

(11) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, a fee of fifty dollars (\$50.00);

(12) filing a copy of articles of merger or conversion of a foreign corporation holding a certificate of authority to transact business in this state not increasing the total amount of authorized shares, a fee of two hundred dollars (\$200);

(13) filing an application for a certificate of authority of a foreign corporation and issuing to it a certificate of authority, a fee of one dollar (\$1.00) for each one thousand shares of the total number of authorized shares represented in this state, but in no case less than two hundred dollars (\$200) or more than one thousand dollars (\$1,000);

(14) filing articles of merger or consolidation increasing the total amount of authorized shares that the surviving or new corporation is authorized to issue in excess of the aggregate number of shares that the merging or consolidating domestic and foreign corporations authorized to transact business in this state had authority to issue, a fee of one dollar (\$1.00) for each one thousand shares of the increase in the total amount of authorized shares represented in this state, but in no case less than two hundred dollars (\$200) or more than one thousand dollars (\$1,000);

(15) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, a fee of fifty dollars (\$50.00);

(16) filing a corporate report and filing a supplemental report, a fee of twenty-five dollars (\$25.00);

(17) filing any other statement, corrected document or report of a domestic or foreign corporation, a fee of twenty-five dollars (\$25.00);

(18) issuing a certificate of good standing and compliance, a fee of fifty dollars (\$50.00); and

(19) issuing a letter of reinstatement of a domestic or foreign corporation, a fee of two hundred dollars (\$200).

B. The public regulation commission shall also charge and collect for furnishing copies of any document, instrument or paper relating to a corporation a fee of one dollar (\$1.00) per page, but in no case less than ten dollars (\$10.00). In addition, a fee of twenty-five dollars (\$25.00) shall be paid in each instance where the commission provides the copies of the document to be certified.

C. As used in this section:

(1) "total amount of authorized shares" means all shares of stock the corporation is authorized to issue; and

(2) "number of authorized shares represented in this state" means the proportion of a corporation's total amount of authorized shares that the sum of the

value of its property located in this state and the gross amount of business transacted by it or from places of business in this state bears to the sum of the value of all of its property, wherever located, and the gross amount of its business, wherever transacted, as determined from information contained in its application for a certificate of authority to transact business in this state.

D. The public regulation commission shall also charge and collect fees, according to a fee schedule approved by the department of finance and administration, for the provision of services requested by persons, agencies and entities dealing with the commission.

E. The public regulation commission may adopt rules establishing reasonable fees for the following services rendered in connection with a service required or permitted to be rendered pursuant to a provision of Chapter 53 NMSA 1978:

(1) an expedited service; or

(2) the handling of checks, drafts, credit or debit cards or other means of payment upon adoption of rules authorizing their use, for which sufficient funds are not on deposit."

Section 3. Section 53-4-5 NMSA 1978 (being Laws 1939, Chapter 164, Section 5, as amended) is amended to read:

"53-4-5. ARTICLES OF INCORPORATION--CONTENTS.--Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them, if natural persons, and by the presidents and the secretaries, if associations, before an officer authorized to take acknowledgments. Within the limitations set forth in the Cooperative Association Act, the articles shall contain:

A. a statement as to the purpose for which the association is formed;

B. the name of the association, which shall include the word "cooperative";

C. the term of existence of the association, which may be perpetual;

D. the location and address of the principal office of the association;

E. the names and addresses of the incorporators of the association;

F. the names and addresses of the directors who will manage the affairs of the association for the first year, unless sooner changed by the members;

G. a statement of whether the association is organized with or without shares and the number of shares or memberships subscribed for;

H. if the association is organized with shares, the amount of authorized capital, the number and types of shares and the par value thereof, which may be placed at any figure, and the rights, preferences and restrictions of each type of share;

I. the minimum number of shares of the association that shall be owned in order to qualify for membership;

J. the maximum amount or percentage of capital of the association that may be owned or controlled by any member;

K. the method by which any surplus, upon dissolution of the association, shall be distributed in conformity with the requirements of the Cooperative Association Act for division of such surplus;

L. the address of the initial registered office of the association and the name of the initial registered agent at that address; and

M. a statement executed by the registered agent in which the agent acknowledges acceptance of the appointment by the filing association, if the agent is an individual, or a statement executed by an authorized officer of a corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent, if the agent is a corporation.

The articles may also contain other provisions not inconsistent with the Cooperative Association Act."

Section 4. Section 53-4-6.2 NMSA 1978 (being Laws 2001, Chapter 200, Section 24) is amended to read:

"53-4-6.2. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT.--

A. An association may change its registered office or its registered agent, or both, by filing in the office of the public regulation commission a statement that includes:

(1) the name of the association;

(2) the address of its registered office;

(3) if the address of the association's registered office is changed, the address to which the registered office is changed;

(4) the name of its registered agent;

(5) if the association's registered agent is changed:

(a) the name of its successor registered agent; and

(b) if the successor registered agent is an individual, a statement executed by the successor registered agent acknowledging acceptance of the appointment by the filing association as its registered agent; or

(c) if the successor registered agent is a corporation, a statement executed by an authorized officer of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent; and

(6) a statement that the address of the association's registered office and the address of the office of its registered agent, as changed, will be identical.

B. The statement made pursuant to the provisions of Subsection A of this section shall be executed by the association by any two members and delivered to the public regulation commission. If the commission finds that the statement conforms to the provisions of the Sanitary Projects Act, it shall file the statement in the office of the commission. The change of address of the registered office, or the appointment of a new registered agent, or both, shall become effective upon filing of the statement required by this section.

C. A registered agent of an association may resign as agent upon filing a written notice thereof, executed in duplicate, with the public regulation commission. The commission shall mail a copy immediately to the association in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the association. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission."

Section 5. Section 53-5-2 NMSA 1978 (being Laws 1978, Chapter 9, Section 1, as amended) is amended to read:

"53-5-2. CORPORATE AND SUPPLEMENTAL REPORTS.--

A. Pursuant to rules that the public regulation commission adopts to implement this section, a domestic or foreign corporation that is not exempted shall file in the office of the commission within thirty days after the date on which its certificate of incorporation or its certificate of authority, as the case may be, is issued by the commission, and biennially thereafter on or before the fifteenth day of the third month following the end of its taxable year, a corporate report in the form prescribed and furnished to the corporation not less than thirty days prior to such reporting date, by the commission, and signed and sworn to by the chairman of the board, president, vice president, secretary, principal accounting officer or authorized agent of the corporation, showing among other information prescribed by the commission:

(1) the current status of:

(a) the name of the corporation;

(b) the mailing address and 1) street address if within a municipality; or 2) rural route number and box number or the geographical location, using well-known landmarks, if outside a municipality, of the corporation's registered office in this state and the name of the agent upon whom process against the corporation may be served;

(c) the names and addresses of all the directors and officers of the corporation and when the term of office of each expires;

(d) the address of the corporation's principal place of business within the state and, if a foreign corporation, the address of its registered office in the state or country under the laws of which it is incorporated and the principal office of the corporation, if different from the registered office; and

(e) the date for the next annual meeting of the shareholders for the election of directors; and

(2) the corporation's taxpayer identification number issued by the revenue processing division of the taxation and revenue department.

B. When the public regulation commission receives a report required to be filed by a corporation under the Corporate Reports Act, it shall determine if the report conforms to the requirements of this section. If the commission finds that the report conforms, it shall be filed. If the commission finds that the report does not conform, it shall promptly return the report to the corporation for any necessary corrections, in which event the penalties prescribed in the Corporate Reports Act for failure to file the report in the time provided shall not apply if the report is corrected and returned to the commission within thirty days from the date on which it was mailed to the corporation by the commission.

C. The public regulation commission may refuse to file a corporate report or a supplemental report received from a corporation that has not paid all fees, including penalties and interest due and payable, to the commission at the time of filing. However, if the corporation and the commission are engaged in any adversary proceeding over the assessment of any fees, the commission shall file the report of the corporation upon its submission to the commission.

D. A supplemental report shall be filed with the public regulation commission within thirty days if, after the filing of the corporate report required under the Corporate Reports Act, a change is made in:

(1) the mailing address, street address, rural route number and box number or the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;

(2) the name or address of any of the directors or officers of the corporation or the date when the term of office of each expires; or

(3) its principal place of business within or without the state."

Section 6. Section 53-5-7 NMSA 1978 (being Laws 1959, Chapter 181, Section 7, as amended) is amended to read:

"53-5-7. FAILURE TO FILE CORPORATE REPORTS--PENALTY.--

A. A domestic corporation required to file an annual corporate report, as provided in the Corporate Reports Act, that fails to submit the report within the time prescribed for a reporting period shall incur a civil penalty of two hundred dollars (\$200) in addition to the fee for filing the report, such civil penalty to be paid upon filing the report. Sixty days after written notice of failure to file a report has been mailed to the corporation's mailing address as shown in the last corporate report filed with the public regulation commission, the corporation shall have its certificate of incorporation canceled by the commission without further proceedings, unless the report is filed and all fees and penalties are paid within that sixty-day period.

B. A foreign corporation required to file an annual corporate report that fails to submit the report within the time prescribed for any reporting period shall incur a civil penalty of two hundred dollars (\$200) in addition to the fee for filing the report. The civil penalty shall be paid upon filing the report. Sixty days after written notice of failure to file a report has been mailed to the corporation's mailing address as shown in the last corporate report filed with the public regulation commission, the corporation shall have its certificate of authority to do business in this state canceled by the commission without further proceedings, unless the report is filed and all fees and penalties are paid within that sixty-day period. Nothing in this section authorizes a forfeiture of the right or privilege of engaging in interstate commerce.

C. A domestic or foreign corporation not exempted from filing a supplemental report, as provided in the Corporate Reports Act, that fails to submit the required report within the time prescribed for a reporting period shall incur a civil penalty of two hundred dollars (\$200) in addition to the fee for filing the report, such civil penalty to be paid upon filing the report.

D. An order of the public regulation commission may be appealed to the district court of Santa Fe county within sixty days of the date it was issued by the commission.

E. If a report required under the Corporate Reports Act is mailed, the public regulation commission shall allow three additional days when considering the postmark as the date of submission when determining if a filing is timely."

Section 7. Section 53-5-9 NMSA 1978 (being Laws 1959, Chapter 181, Section 9, as amended) is amended to read:

"53-5-9. DORMANT CORPORATIONS--STATEMENT IN LIEU OF CORPORATE REPORT.--

A. Whenever a corporation is no longer engaged in active business in this state or in carrying out the purposes of its incorporation, two of its shareholders, directors or officers may unite in signing a statement to that effect; the statement shall be filed with the public regulation commission in lieu of the required corporate report. Upon the filing of this statement and the payment of all fees and penalties, the commission is authorized to strike the name of the corporation from the list of active corporations in this state; but this action shall not be construed in any sense as a formal dissolution of the corporation and the corporation shall not be relieved thereby from any outstanding obligation. A dormant corporation may be fully revived by the resumption of active business and the filing of a corporate report.

B. A dormant corporation may continue in dormant status by filing a statement of renewal every five years to the effect that it is not engaged in active business in this state and is not carrying out the purposes of its incorporation. Sixty days after written notice of failure to file a statement of renewal has been mailed to its registered agent and also to the principal office of the corporation as shown in the last corporate report filed with the commission, the corporation shall have its certificate of incorporation or authority canceled by the commission without further proceedings unless the statement of renewal is filed and all fees are paid within that sixty-day period."

Section 8. Section 53-8-9 NMSA 1978 (being Laws 1975, Chapter 217, Section 9, as amended) is amended to read:

"53-8-9. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT.--

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the public regulation commission a statement setting forth:

- (1) the name of the corporation;
- (2) the address of its then registered office;
- (3) if the address of its registered office be changed, the address to which the registered office is to be changed;
- (4) the name of its then registered agent;

(5) if its registered agent be changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

B. The statement pursuant to the provisions of Subsection A of this section shall be executed by the corporation by an authorized officer of the corporation and delivered to the public regulation commission. If the public regulation commission finds that the statement conforms to the provisions of the Nonprofit Corporation Act, it shall file the statement in the office of the public regulation commission, and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

C. A registered agent of a corporation may resign as agent upon filing a written notice of resignation, including the original and a copy, with the public regulation commission. The copy may be a photocopy of the original after it was signed or a photocopy that is conformed to the original. The commission shall mail an endorsed copy to the corporation in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the corporation. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the public regulation commission.

D. If the registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission for filing a statement that complies with the requirements of Subsection A of this section and recites that the corporation has been notified of the change."

Section 9. Section 53-8-12 NMSA 1978 (being Laws 1975, Chapter 217, Section 12, as amended) is amended to read:

"53-8-12. BYLAWS.--

A. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be

vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

B. The initial bylaws and any subsequent bylaws whether by amendment, repeal or new adoption shall be executed by two authorized officers of the corporation. The bylaws in effect for the corporation shall be maintained at the corporation's principal office in New Mexico and shall be subject to inspection and copying by the public. If the most recently adopted bylaws are so maintained, they shall not be void, notwithstanding any requirements of prior law. The corporation may charge a reasonable fee for copying its bylaws, not to exceed one dollar (\$1.00) per page."

Section 10. Section 53-8-18 NMSA 1978 (being Laws 1975, Chapter 217, Section 18, as amended) is amended to read:

"53-8-18. NUMBER AND ELECTION OF DIRECTORS.--

A. The number of directors of a corporation shall be not less than three. Subject to that limitation, the number of directors shall be fixed by, or determined in the manner provided in, the articles of incorporation or the bylaws. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. If the number of directors is not fixed by, or determined in a manner provided in, the articles of incorporation or the bylaws, the number shall be the same as that stated in the articles of incorporation.

B. The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

C. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified.

D. A director may be removed from office pursuant to any procedure provided in the articles of incorporation or the bylaws."

Section 11. Section 53-8-31 NMSA 1978 (being Laws 1975, Chapter 217, Section 31, as amended) is amended to read:

"53-8-31. ARTICLES OF INCORPORATION.--

A. The articles of incorporation shall set forth:

- (1) the name of the corporation;
- (2) the period of duration, which may be perpetual;
- (3) the purpose for which the corporation is organized;
- (4) any provisions not inconsistent with law that the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;
- (5) the address of its initial registered office and the name of its initial registered agent at such address;
- (6) the names and addresses of the persons who have consented to serve as the initial directors; and
- (7) the name and address of each incorporator.

B. It is not necessary to set forth in the articles of incorporation any of the corporate powers enumerated in the Nonprofit Corporation Act.

C. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 12. Section 53-8-32 NMSA 1978 (being Laws 1975, Chapter 217, Section 32, as amended) is amended to read:

"53-8-32. FILING OF ARTICLES OF INCORPORATION.--

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of incorporation and a statement executed by the designated registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation, shall be delivered to the commission. If the commission finds that the articles of incorporation and the statement

conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original and the statement in the office of the commission; and

(3) issue a certificate of incorporation to which shall be affixed the copy.

B. The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the commission, shall be returned to the incorporators or their representative."

Section 13. Section 53-8-37 NMSA 1978 (being Laws 1975, Chapter 217, Section 37) is amended to read:

"53-8-37. ARTICLES OF AMENDMENT.--The articles of amendment shall be executed by the corporation by two authorized officers of the corporation and shall set forth:

A. the name of the corporation;

B. the amendment so adopted;

C. if there are members entitled to vote thereon:

(1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at the meeting and that the amendment received at least two-thirds of the votes that members present at the meeting or represented by proxy were entitled to cast; or

(2) a statement that the amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

D. if there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted and a statement of the fact that the amendment received the vote of a majority of the directors in office."

Section 14. Section 53-8-38 NMSA 1978 (being Laws 1975, Chapter 217, Section 38, as amended) is amended to read:

"53-8-38. EFFECTIVENESS OF AMENDMENT.--

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of amendment shall be delivered to the commission. If the commission finds that the articles of amendment conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original in the office of the commission; and

(3) issue a certificate of amendment to which shall be affixed the copy.

B. The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the commission, shall be returned to the corporation or its representative.

C. Unless the commission disapproves pursuant to Subsection A of Section 53-8-91 NMSA 1978, the amendment shall become effective upon delivery of the articles of amendment to the commission, or on such later date, not more than thirty days subsequent to the delivery thereof to the commission, as shall be provided for in the articles of amendment.

D. An amendment shall not affect any existing cause of action in favor of or against the corporation, or any pending action to which the corporation shall be a party or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against the corporation under its former name shall abate for that reason."

Section 15. Section 53-8-39 NMSA 1978 (being Laws 1975, Chapter 217, Section 39) is amended to read:

"53-8-39. RESTATED ARTICLES OF INCORPORATION.--

A. A domestic corporation may at any time restate its articles of incorporation as amended.

B. Upon approval by a majority of the directors in office, restated articles of incorporation shall be executed in duplicate by the corporation by two authorized officers of the corporation and shall set forth:

(1) the name of the corporation;

(2) the period of its duration;

(3) the purpose or purposes that the corporation is authorized to pursue; and

(4) any other provisions, not inconsistent with law, that are then set forth in the articles of incorporation as amended, except that it shall not be necessary to set forth in the restated articles of incorporation the registered office of the corporation, its registered agent, its directors or its incorporators.

C. The restated articles of incorporation shall state that they correctly set forth the provisions of the articles of incorporation as amended, that they have been duly approved as required by law and that they supersede the original articles of incorporation and all amendments thereto.

D. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the restated articles of incorporation shall be delivered to the commission. If the commission finds that the restated articles conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original in the office of the commission; and

(3) issue a restated certificate of incorporation to which shall be affixed the copy.

E. The restated certificate of incorporation, together with the copy of the restated articles of incorporation affixed thereto by the commission, shall be returned to the corporation or its representative.

F. Upon the issuance of the restated certificate of incorporation by the commission, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto."

Section 16. Section 53-8-43 NMSA 1978 (being Laws 1975, Chapter 217, Section 43) is amended to read:

"53-8-43. ARTICLES OF MERGER OR CONSOLIDATION.--

A. Upon approval, articles of merger or articles of consolidation shall be executed by each corporation by two authorized officers of the corporation, and shall set forth:

(1) the plan of merger or the plan of consolidation;

(2) if the members of any merging or consolidating corporation are entitled to vote thereon, then as to each corporation:

(a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at the meeting and that the plan received at least two-thirds of the votes that members present at the meeting or represented by proxy were entitled to cast; or

(b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(3) if any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each corporation a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that the plan received the vote of a majority of the directors in office.

B. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of merger or articles of consolidation shall be delivered to the commission. If the commission finds that the articles conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original in the office of the commission; and

(3) issue a certificate of merger or a certificate of consolidation to which shall be affixed the copy.

C. The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the commission, shall be returned to the surviving or new corporation or its representative."

Section 17. Section 53-8-51 NMSA 1978 (being Laws 1975, Chapter 217, Section 51) is amended to read:

"53-8-51. ARTICLES OF DISSOLUTION.--If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation are paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation are transferred, conveyed or distributed in accordance with the provisions of the Nonprofit Corporation Act, articles of

dissolution shall be executed by the corporation by two authorized officers of the corporation, which statement shall set forth:

A. the name of the corporation;

B. if there are members entitled to vote thereon:

(1) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at the meeting and that the resolution received at least two-thirds of the votes that members present at the meeting or represented by proxy were entitled to cast; or

(2) a statement that the resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

C. if there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that the resolution received the vote of a majority of the directors in office;

D. that all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

E. a copy of the plan of distribution, if any, as adopted by the corporation or a statement that no plan was so adopted;

F. that all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of the Nonprofit Corporation Act; and

G. that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against it in any pending suit."

Section 18. Section 53-8-52 NMSA 1978 (being Laws 1975, Chapter 217, Section 52) is amended to read:

"53-8-52. FILING OF ARTICLES OF DISSOLUTION.--

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of dissolution shall be delivered to the commission. If the commission finds that such articles of dissolution conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original in the office of the commission; and

(3) issue a certificate of dissolution to which shall be affixed the copy.

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the commission, shall be returned to the representative of the dissolved corporation. Upon the issuance of a certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in the Nonprofit Corporation Act."

Section 19. Section 53-8-53 NMSA 1978 (being Laws 1975, Chapter 217, Section 53) is amended to read:

"53-8-53. REVOCATION OF CERTIFICATE OF INCORPORATION.--

A. The certificate of incorporation of a corporation to conduct affairs in New Mexico may be revoked by the commission upon the conditions prescribed in this section when:

(1) the corporation has failed to file its annual report within the time required by the Nonprofit Corporation Act or has failed to pay any fees or penalties prescribed by that act when they have become due and payable;

(2) the certificate of incorporation of the corporation was procured through fraud practiced upon the state;

(3) the corporation has continued to exceed or abuse the authority conferred upon it by the Nonprofit Corporation Act; or

(4) a misrepresentation has been made of any material matter in any application, report, statement or other document submitted by the corporation pursuant to the Nonprofit Corporation Act.

B. A certificate of incorporation of a corporation shall not be revoked by the commission unless:

(1) the commission has given the corporation not less than sixty days' notice thereof by mail addressed to the corporation's mailing address as shown in the most recent corporate report filed with the commission; and

(2) the corporation fails prior to revocation to file an annual report, pay fees or penalties, file articles of amendment or articles of merger or correct a material misrepresentation in a document submitted by the corporation pursuant to the Nonprofit Corporation Act."

Section 20. Section 53-8-54 NMSA 1978 (being Laws 1975, Chapter 217, Section 54, as amended) is amended to read:

"53-8-54. ISSUANCE OF CERTIFICATE OF REVOCATION.--

A. Upon revoking a certificate of incorporation, the commission shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail to the corporation at the corporation's mailing address as shown in the most recent corporate report filed with the commission a notice of the revocation accompanied by one of the certificates.

B. Upon the issuance of a certificate of revocation, the authority of the corporation to conduct affairs in New Mexico ceases.

C. A corporation administratively revoked under Section 53-8-53 NMSA 1978 may apply to the commission for reinstatement within two years after the effective date of revocation. The application shall:

(1) recite the name of the corporation and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the corporation's name satisfies the requirements of Section 53-8-7 NMSA 1978.

D. If the commission determines that the application contains the information required by Subsection C of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

E. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred."

Section 21. Section 53-8-68 NMSA 1978 (being Laws 1975, Chapter 217, Section 68, as amended) is amended to read:

"53-8-68. APPLICATION FOR CERTIFICATE OF AUTHORITY.--

A. A foreign corporation, in order to procure a certificate of authority to conduct affairs in New Mexico, shall make application to the commission, which application shall set forth:

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) the date of incorporation and the period of duration of the corporation;

(3) the address of the registered office of the corporation in the state or country under the laws of which it is incorporated and the address of the principal office of the corporation, if different from the address of the registered office;

(4) the address of the proposed registered office of the corporation in New Mexico and the name of its proposed registered agent in this state at such address;

(5) the purpose or purposes of the corporation that it proposes to pursue in conducting its affairs in New Mexico;

(6) the names and respective addresses of the directors and officers of the corporation; and

(7) such additional information as may be necessary or appropriate in order to enable the commission to determine whether the corporation is entitled to a certificate of authority to conduct affairs in New Mexico.

B. The application shall be made on forms prescribed by the commission, or on forms containing substantially the same information as forms prescribed by the commission, and shall be executed by the corporation by two authorized officers of the corporation."

Section 22. Section 53-8-69 NMSA 1978 (being Laws 1975, Chapter 217, Section 69, as amended) is amended to read:

"53-8-69. FILING OF APPLICATION FOR CERTIFICATE OF AUTHORITY.--

A. The following documents shall be delivered to the commission:

(1) an original of the application of the corporation for a certificate of authority and a certificate of good standing and compliance issued by the appropriate official of the state or country under the laws of which the corporation is incorporated;

(2) a statement executed by the designated registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent, in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(3) a copy of whichever statement is filed pursuant to Paragraph (2) of this subsection, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original.

B. If the commission finds that the application and the affidavit conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file in the office of the commission the original of the application and the statement; and

(3) issue a certificate of authority to conduct affairs in New Mexico to which shall be affixed the application copy.

C. The certificate of authority, together with the application affixed thereto by the commission, shall be returned to the corporation or its representative."

Section 23. Section 53-8-72 NMSA 1978 (being Laws 1975, Chapter 217, Section 72, as amended) is amended to read:

"53-8-72. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.--

A. A foreign corporation authorized to conduct affairs in New Mexico may change its registered office or change its registered agent, or both, upon filing in the office of the commission a statement setting forth:

(1) the name of the corporation;

(2) the address of its then registered office;

(3) if the address of its registered office is changed, the address to which the registered office is to be changed;

(4) the name of its registered agent;

(5) if its registered agent is changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

B. Such statement shall be executed by the corporation by an authorized officer of the corporation and delivered to the commission. If the commission finds that such statement conforms to the provisions of the Nonprofit Corporation Act, it shall file the statement in its office, and upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, shall become effective.

C. A registered agent in New Mexico appointed by a foreign corporation may resign as agent upon filing an originally executed notice and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, with the commission, which shall mail a copy to the foreign corporation at its principal office in the state or country under the laws of which it is incorporated as shown by its most recent annual report. The appointment of an agent shall terminate upon the expiration of thirty days after receipt of such notice by the commission.

D. If a registered agent changes its business address to another place within the same county, it may change such address and the address of the registered office of any corporations of which it is the registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to the provisions of Paragraphs (5) and (7) of Subsection A of this section and must recite that a copy of the statement has been mailed to each such corporation."

Section 24. Section 53-8-76 NMSA 1978 (being Laws 1975, Chapter 217, Section 76) is amended to read:

"53-8-76. AMENDED CERTIFICATE OF AUTHORITY.--

A. A foreign corporation authorized to conduct affairs in New Mexico shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in New Mexico other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the commission.

B. The requirements in respect to the form and contents of the application, the manner of its execution, the filing of an original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, with the commission, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority."

Section 25. Section 53-8-77 NMSA 1978 (being Laws 1975, Chapter 217, Section 77) is amended to read:

"53-8-77. WITHDRAWAL OF FOREIGN CORPORATION.--

A. A foreign corporation authorized to conduct affairs in New Mexico may withdraw from this state upon procuring from the commission a certificate of withdrawal. In order to procure the certificate of withdrawal, the foreign corporation shall deliver to the commission an application for withdrawal, which shall set forth:

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) that the corporation is not conducting affairs in New Mexico;

(3) that the corporation surrenders its authority to conduct affairs in New Mexico;

(4) that the corporation revokes the authority of its registered agent in New Mexico to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on the corporation by service thereof on the secretary of state; and

(5) a post office address to which the commission may mail a copy of any process against the corporation that may be served on it.

B. The application for withdrawal shall be made on forms prescribed and furnished by the commission and shall be executed by the corporation by two authorized officers of the corporation or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by the receiver or trustee."

Section 26. Section 53-8-78 NMSA 1978 (being Laws 1975, Chapter 217, Section 78) is amended to read:

"53-8-78. FILING OF APPLICATION FOR WITHDRAWAL.--

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the application for withdrawal shall be delivered to the commission. If the commission finds that the application conforms to the provisions of the Nonprofit Corporation Act, it shall, when all fees have been paid as prescribed in that act:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original in the office of the commission; and

(3) issue a certificate of withdrawal to which shall be affixed the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the commission, shall be returned to the corporation or its representative. Upon the issuance of the certificate of withdrawal, the authority of the corporation to conduct affairs in New Mexico shall cease."

Section 27. Section 53-8-79 NMSA 1978 (being Laws 1975, Chapter 217, Section 79, as amended) is amended to read:

"53-8-79. REVOCATION OF CERTIFICATE OF AUTHORITY.--

A. The certificate of authority of a foreign corporation to conduct affairs in New Mexico may be revoked by the commission upon the conditions prescribed in this section when:

(1) the corporation has failed to file its annual report within the time required by the Nonprofit Corporation Act or has failed to pay any fees or penalties prescribed by that act when they have become due and payable;

(2) the corporation has failed to appoint and maintain a registered agent in New Mexico as required by the Nonprofit Corporation Act;

(3) the corporation has failed, after change of its registered agent, to file in the office of the commission a statement of such change as required by the Nonprofit Corporation Act;

(4) the corporation has failed to file in the office of the commission any amendment to its articles of incorporation or any articles of merger within the time prescribed by the Nonprofit Corporation Act;

(5) the certificate of authority of the corporation was procured through fraud practiced upon the state;

(6) the corporation has continued to exceed or abuse the authority conferred upon it by the Nonprofit Corporation Act; or

(7) a misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by the corporation pursuant to the Nonprofit Corporation Act.

B. A certificate of authority of a foreign corporation shall not be revoked by the commission unless:

(1) the commission has given the corporation not less than sixty days' notice thereof by mail addressed to the corporation's mailing address shown in the most recent annual report filed with the commission; and

(2) the corporation fails prior to revocation to file an annual report, or pay fees or penalties, or file the required statement of change of registered agent, or file articles of amendment or articles of merger, or correct such misrepresentation pursuant to the Nonprofit Corporation Act."

Section 28. Section 53-8-80 NMSA 1978 (being Laws 1975, Chapter 217, Section 80, as amended) is amended to read:

"53-8-80. ISSUANCE OF CERTIFICATE OF REVOCATION.--

A. Upon revoking a certificate of authority, the commission shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail to the corporation at the corporation's mailing address as shown in the most recent annual report filed with the commission, a notice of the revocation accompanied by one of the certificates.

B. Upon the issuance of a certificate of revocation, the authority of the corporation to conduct affairs in New Mexico ceases."

Section 29. Section 53-8-85 NMSA 1978 (being Laws 1975, Chapter 217, Section 85, as amended) is amended to read:

"53-8-85. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES.--
The public regulation commission shall charge and collect for:

A. filing articles of incorporation and issuing a certificate of incorporation, twenty-five dollars (\$25.00);

B. filing articles of amendment and issuing a certificate of amendment, twenty dollars (\$20.00);

C. filing restated articles of incorporation and issuing a restated certificate of incorporation, twenty dollars (\$20.00);

D. filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty dollars (\$20.00);

E. filing a statement of change of address of registered office or change of registered agent, or both, ten dollars (\$10.00);

F. filing an agent's statement of change of address of registered agent for each affected corporation, ten dollars (\$10.00);

G. filing articles of dissolution, ten dollars (\$10.00);

H. filing an application of a foreign corporation for a certificate of authority to conduct affairs in New Mexico and issuing a certificate of authority, twenty-five dollars (\$25.00);

I. filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in New Mexico and issuing an amended certificate of authority, twenty dollars (\$20.00);

J. filing an application to reserve a corporation name or filing a notice to transfer of a reserved corporate name, ten dollars (\$10.00);

K. filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in New Mexico, twenty-five dollars (\$25.00);

L. filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, ten dollars (\$10.00);

M. filing any other statement or report, including an annual report, of a domestic or foreign corporation, ten dollars (\$10.00);

N. issuing a certificate of good standing and compliance, ten dollars (\$10.00); and

O. issuing a letter or reinstatement of a domestic or foreign corporation, a fee of twenty-five dollars (\$25.00)."

Section 30. Section 53-11-12 NMSA 1978 (being Laws 1967, Chapter 252, Section 3, as amended) is amended to read:

"53-11-12. FAILURE TO APPOINT AND MAINTAIN REGISTERED AGENT--PENALTY--REINSTATEMENT.--

A. If a corporation fails for a period of thirty days to file the corporate reports required pursuant to Section 53-5-2 NMSA 1978 or to appoint and maintain a registered agent in this state or has failed for thirty days after change of its registered office or registered agent to file in the office of the commission a statement of the change, the commission shall notify the corporation of its delinquency by letter to the corporation's principal office. If the delinquency is not corrected within sixty days from the date the letter is mailed, the commission shall issue a certificate of revocation that recites the grounds for revocation and its effective date.

B. A corporation administratively revoked pursuant to this section may apply to the commission for reinstatement within two years after the effective date of revocation. The application shall:

(1) recite the name of the corporation and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the corporation's name satisfies the requirements of Section 53-11-7 NMSA 1978.

C. If the commission determines that the application contains the information required by Subsection B of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

D. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred."

Section 31. Section 53-11-13 NMSA 1978 (being Laws 1967, Chapter 81, Section 12, as amended) is amended to read:

"53-11-13. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT.--

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the public regulation commission a statement setting forth:

- (1) the name of the corporation;
- (2) the address of its registered office;
- (3) if the address of its registered office is to be changed, the address to which the registered office is to be changed;
- (4) the name of its registered agent;
- (5) if its registered agent is to be changed:
 - (a) the name of its successor registered agent; and
 - (b) a statement executed by the successor registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and
- (6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

B. The statement shall be executed by the corporation by an authorized officer and delivered to the public regulation commission. If the commission finds that the statement conforms to the provisions of the Business Corporation Act, it shall file the statement in its office, and, upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, becomes effective, and, upon filing, fulfills the requirement to file a supplemental report under Section 53-5-2 NMSA 1978.

C. Any registered agent of a corporation may resign upon filing a written notice of resignation with the public regulation commission. The commission shall mail a copy immediately to the corporation at its principal place of business as shown on the records of the commission. The appointment of the resigning agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission.

D. If a registered agent changes his business address to another place within the same county, he may change the address and the address of the registered office of any corporation of which he is the registered agent by filing a statement as required by this section except that it need be signed only by the registered agent, need not be responsive to Paragraph (5) of Subsection A of this section and shall recite that a copy of the statement has been mailed to the corporation.

E. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission for filing a statement that complies with the requirements of Subsection A of this section, and recites that the corporation has been notified of the change."

Section 32. Section 53-11-16 NMSA 1978 (being Laws 1967, Chapter 81, Section 15, as amended) is amended to read:

"53-11-16. ISSUANCE OF SHARES OF PREFERRED OR SPECIAL CLASSES IN SERIES.--

A. If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

- (1) the rate of dividend;
- (2) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;
- (3) the amount payable upon shares in event of voluntary and involuntary liquidation;
- (4) sinking fund provisions, if any, for the redemption or purchase of shares;
- (5) the terms and conditions, if any, on which shares may be converted; and
- (6) voting rights, if any.

B. If the articles of incorporation expressly vest authority in the board of directors, then to the extent that the articles of incorporation have not established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors may divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

C. In order for the board of directors to establish a series, where authority to do so is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as are not fixed and determined by the articles of incorporation.

D. Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the commission a statement setting forth:

(1) the name of the corporation;

(2) a copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;

(3) the date of adoption of the resolution; and

(4) that the resolution was duly adopted by the board of directors.

E. An original of the statement and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, shall be executed by an authorized officer of the corporation and shall be delivered to the commission. If the commission finds that the statement conforms to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed", and the month, day and year of the filing thereof;

(2) file the original in its office; and

(3) return the copy to the corporation or its representative.

F. Upon the filing of such statement by the commission, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and constitute an amendment of the articles of incorporation."

Section 33. Section 53-11-36 NMSA 1978 (being Laws 1967, Chapter 81, Section 35, as amended) is amended to read:

"53-11-36. NUMBER AND ELECTION OF DIRECTORS.--The number of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. If the number of directors is not fixed by, or in the manner provided in, the bylaws or the articles of incorporation, the number shall be the same as the number of directors constituting the initial board of directors. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders and until their successors have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by the Business Corporation Act. Each director shall hold office for the term for which the director is elected and until a successor has been elected and qualified."

Section 34. Section 53-12-1 NMSA 1978 (being Laws 1967, Chapter 81, Section 49) is amended to read:

"53-12-1. INCORPORATORS.--One or more persons or a domestic or foreign corporation may act as incorporator of a corporation by signing and delivering an original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, to the commission of articles of incorporation for the corporation."

Section 35. Section 53-12-2 NMSA 1978 (being Laws 1967, Chapter 81, Section 50, as amended) is amended to read:

"53-12-2. ARTICLES OF INCORPORATION.--

A. The articles of incorporation shall set forth:

- (1) the name of the corporation;
- (2) the period of duration, if other than perpetual;
- (3) the purpose for which the corporation is organized, which may include the transaction of any lawful business for which corporations may be incorporated under the Business Corporation Act;

(4) the aggregate number of shares that the corporation has authority to issue and, if the shares are to be divided into classes, the number of shares of each class;

(5) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;

(6) if the corporation is to issue the shares of any preferred or special class in series, the designation of each series and a statement of the variations in the relative rights and preferences as between series, insofar as they are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(7) any provision limiting or denying to shareholders the preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares;

(8) the address of its initial registered office and the name of its initial registered agent at the address;

(9) the names and addresses of the persons who have consented to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and

(10) the name and address of each incorporator.

B. In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(1) the direction of the management of the business and the regulation of the affairs of the corporation;

(2) the definition, limitation and regulation of the powers of the corporation, the directors and the shareholders, or any class of the shareholders, including restrictions on the transfer of shares;

(3) the minimum consideration for any authorized shares or class of shares; and

(4) any provision that, under the Business Corporation Act, is required or permitted to be set forth in the bylaws.

C. It is not necessary to set forth in the articles of incorporation any of the corporate powers enumerated in the Business Corporation Act.

D. The articles of incorporation may set forth any provision that the incorporators elect to set forth for the regulation of the internal affairs of the corporation.

E. The articles of incorporation may provide that a director shall not be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director unless:

(1) the director has breached or failed to perform the duties of the director's office in compliance with Subsection B of Section 53-11-35 NMSA 1978; and

(2) the breach or failure to perform constitutes:

(a) negligence, willful misconduct or recklessness in the case of a director who has either an ownership interest in the corporation or receives as a director or as an employee of the corporation compensation of more than two thousand dollars (\$2,000) from the corporation in any calendar year; or

(b) willful misconduct or recklessness in the case of a director who does not have an ownership interest in the corporation and does not receive as director or as an employee of the corporation compensation of more than two thousand dollars (\$2,000) from the corporation in any calendar year.

Such a provision in the articles of incorporation shall, however, only eliminate the liability of a director for action taken as a director or any failure to take action as a director at meetings of the board of directors or of a committee of the board of directors or by virtue of action of the directors without a meeting pursuant to Section 53-11-43 NMSA 1978, on or after the date when such provision in the articles of incorporation becomes effective."

Section 36. Section 53-12-3 NMSA 1978 (being Laws 1967, Chapter 81, Section 51, as amended) is amended to read:

"53-12-3. FILING OF ARTICLES OF INCORPORATION.--

A. An original of the articles of incorporation together with a copy, which may be signed, photocopied or conformed, and a statement executed by the designated registered agent acknowledging acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation, shall be delivered to the commission. If the commission finds that the articles of incorporation and the statement conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;

(2) file the original and the statement in its office; and

(3) issue a certificate of incorporation to which it shall affix the file-stamped copy.

B. The certificate of incorporation, together with the file-stamped copy of the articles of incorporation affixed to it, shall be returned by the commission to the incorporators or their representative."

Section 37. Section 53-13-5 NMSA 1978 (being Laws 1967, Chapter 81, Section 59, as amended) is amended to read:

"53-13-5. FILING OF ARTICLES OF AMENDMENT.--

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of amendment shall be delivered to the commission. If the commission finds that the articles of amendment conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of amendment to which it shall affix the copy.

B. The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the commission, shall be returned to the corporation or its representative."

Section 38. Section 53-16-1 NMSA 1978 (being Laws 1967, Chapter 81, Section 79, as amended) is amended to read:

"53-16-1. VOLUNTARY DISSOLUTION BY INCORPORATORS.--A corporation that has or has not commenced business and has not issued any shares may be voluntarily dissolved by its incorporators in the following manner:

A. articles of dissolution shall be executed by a majority of the incorporators and shall set forth:

(1) the name of the corporation;

(2) the date of issuance of its certificate of incorporation;

(3) that none of its shares has been issued;

(4) that the corporation has or has not commenced business;

(5) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(6) that no debts of the corporation remain unpaid; and

(7) that a majority of the incorporators elect that the corporation be dissolved;

B. the original of the articles of dissolution together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the articles of dissolution conform to law and that the corporation has complied with the Tax Administration Act and has paid all contributions required by the Unemployment Compensation Law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of dissolution to which it shall affix the file-stamped copy; and

C. the certificate of dissolution, together with the file-stamped copy of the articles of dissolution affixed to it, shall be returned by the commission to the incorporators or their representative. Upon the issuance of the certificate of dissolution by the commission the existence of the corporation shall cease."

Section 39. Section 53-16-4 NMSA 1978 (being Laws 1967, Chapter 81, Section 82, as amended) is amended to read:

"53-16-4. FILING STATEMENT OF INTENT TO DISSOLVE.--An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the commission. If the commission finds that the statement conforms to law, it shall:

A. endorse on the original and copy the word "filed" and the month, day and year of the filing;

B. file the original in its office; and

C. return the copy to the corporation or its representative."

Section 40. Section 53-16-9 NMSA 1978 (being Laws 1967, Chapter 81, Section 87, as amended) is amended to read:

"53-16-9. FILING STATEMENT OF REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS.--An original of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the statement conforms to law, it shall, when all fees have been paid:

A. endorse on the original and copy the word "filed" and the month, day and year of the filing;

B. file the original in its office; and

C. return the file-stamped copy to the corporation or its representative."

Section 41. Section 53-16-12 NMSA 1978 (being Laws 1967, Chapter 81, Section 90, as amended) is amended to read:

"53-16-12. FILING OF ARTICLES OF DISSOLUTION.--

A. An original of articles of dissolution together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the articles of dissolution conform to law and that the corporation has complied with the Tax Administration Act and has paid all contributions required by the Unemployment Compensation Law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of dissolution to which it shall affix the file-stamped copy.

B. The certificate of dissolution, together with the file-stamped copy of the articles of dissolution affixed to it, shall be returned by the commission to the representative of the dissolved corporation. Upon the issuance of the certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in the Business Corporation Act."

Section 42. Section 53-17-5 NMSA 1978 (being Laws 1967, Chapter 81, Section 107, as amended) is amended to read:

"53-17-5. APPLICATION FOR CERTIFICATE OF AUTHORITY.--

A. A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application to the commission, which application shall set forth:

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) if the name of the corporation does not contain the word "corporation", "company", "incorporated" or "limited" or does not contain an abbreviation of one of these words, the name of the corporation with the word or abbreviation that it elects to add thereto for use in this state;

(3) the date of incorporation and the period of duration of the corporation;

(4) the address of the registered office of the corporation in the state or country under the laws of which it is incorporated and the address of the principal office of the corporation, if different;

(5) the address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address;

(6) the purpose of the corporation that it proposes to pursue in the transaction of business in this state;

(7) the names and respective addresses of the directors and officers of the corporation who have consented to serve;

(8) a statement of the aggregate number of shares that the corporation has authority to issue, itemized by classes and by series, if any, within a class;

(9) a statement of the aggregate number of issued shares, itemized by class and by series, if any, within each class;

(10) an estimate expressed in dollars of:

(a) the gross amount of business that will be transacted by it during its current fiscal year at or from places of business located in the state;

(b) the gross amount of business that will be transacted by it during its current fiscal year, wherever transacted;

(c) the value of all property to be owned by it and located in the state during its current fiscal year; and

(d) the value of all property to be owned by it during its current fiscal year, wherever located; and

(11) additional information necessary or appropriate in order to enable the commission to determine whether the corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

B. The application shall be made on forms prescribed by the commission or on forms containing substantially the same information as forms prescribed by the commission and shall be executed by the corporation by an authorized officer of the corporation."

Section 43. Section 53-17-10 NMSA 1978 (being Laws 1967, Chapter 81, Section 111, as amended) is amended to read:

"53-17-10. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.--

A. A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the public regulation commission a statement setting forth:

(1) the name of the corporation;

(2) the address of its registered office;

(3) if the address of its registered office is changed, the address to which the registered office is to be changed;

(4) the name of its registered agent;

(5) if its registered agent is changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

B. The statement shall be executed by the corporation by an authorized officer and delivered to the public regulation commission. If the commission finds that the statement conforms to the provisions of the Business Corporation Act, it shall file the statement in its office, and upon the filing, the change of address of the registered office or the appointment of a new registered agent, or both, shall become effective.

C. A registered agent of a foreign corporation may resign as agent upon filing a written notice of resignation with the public regulation commission, which shall mail immediately a copy of it to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission.

D. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission for filing a statement that complies with the requirements of this section but need not be responsive to Paragraph (5) of Subsection A of this section and recites that the corporation has been notified of the change."

Section 44. Section 53-17-14 NMSA 1978 (being Laws 1967, Chapter 81, Section 115) is amended to read:

"53-17-14. AMENDED CERTIFICATE OF AUTHORITY.--A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the commission. The requirements in respect to the form and contents of the application, the manner of its execution, the filing of an original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, with the commission, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority."

Section 45. Section 53-17-15 NMSA 1978 (being Laws 1967, Chapter 81, Section 116, as amended) is amended to read:

"53-17-15. WITHDRAWAL OF FOREIGN CORPORATION.--

A. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the commission a certificate of withdrawal.

In order to procure the certificate of withdrawal, the foreign corporation shall deliver to the commission an application for withdrawal, which shall set forth:

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) a statement that the corporation is not transacting business in this state;

(3) a statement that the corporation surrenders its authority to transact business in this state;

(4) a statement that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in an action, suit or proceeding based upon a cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on the corporation by service thereof on the secretary of state;

(5) an address to which the secretary of state may mail a copy of a process against the corporation that may be served on it;

(6) a statement of the aggregate number of shares that the corporation has authority to issue, itemized by class and by series, if any, within each class, as of the date of the application;

(7) a statement of the aggregate number of issued shares, itemized by class and by series, if any, within each class, as of the date of the application; and

(8) additional information as necessary or appropriate in order to enable the commission to determine and assess any unpaid fees payable by the foreign corporation.

B. The application for withdrawal shall be made on forms prescribed by the commission or on forms containing substantially the same information as forms prescribed by the commission and shall be executed by the corporation by an authorized officer of the corporation or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by the receiver or trustee."

Section 46. Section 53-17-16 NMSA 1978 (being Laws 1967, Chapter 81, Section 117, as amended) is amended to read:

"53-17-16. FILING OF APPLICATION FOR WITHDRAWAL.--

A. An original of an application for withdrawal together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the application conforms to the provisions of the Business

Corporation Act and that the corporation has complied with the Tax Administration Act and has paid all contributions required by the Unemployment Compensation Law, it shall, when all fees have been paid:

- (1) endorse on the original and copy the word "filed" and the month, day and year of the filing;
- (2) file the original in its office; and
- (3) issue a certificate of withdrawal to which it shall affix the file-stamped copy.

B. The certificate of withdrawal, together with the file-stamped copy of the application for withdrawal affixed to it, shall be returned by the commission to the corporation or its representative. Upon the issuance of the certificate of withdrawal, the authority of the corporation to transact business in this state shall cease."

Section 47. Section 53-17-17 NMSA 1978 (being Laws 1967, Chapter 81, Section 118, as amended) is amended to read:

"53-17-17. REVOCATION OF CERTIFICATE OF AUTHORITY.--

A. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the commission upon the conditions prescribed in this section when:

- (1) the corporation has failed to file its annual report timely or has failed to pay any fees or penalties thereon when they became due;
- (2) the corporation has failed to appoint and maintain a registered agent in this state as required by the Business Corporation Act;
- (3) the corporation has failed, after change of its registered office or registered agent, to file in the office of the commission a statement of the change as required by the Business Corporation Act;
- (4) the corporation has failed to file in the office of the commission any amendment to its articles of incorporation or any articles of merger within the time prescribed by the Business Corporation Act; or
- (5) a misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by the corporation pursuant to the Business Corporation Act.

B. A certificate of authority of a foreign corporation shall not be revoked by the commission unless:

(1) it has given the corporation not less than sixty days' notice thereof by mail addressed to the corporation's mailing address as shown in the most recent annual report filed with the commission; and

(2) the corporation fails, prior to revocation, to file the annual report or pay the fees or penalties or file the required statement of change of registered agent or registered office or file the articles of amendment or articles of merger or correct the misrepresentation."

Section 48. Section 53-17-18 NMSA 1978 (being Laws 1967, Chapter 81, Section 119, as amended) is amended to read:

"53-17-18. ISSUANCE OF CERTIFICATE OF REVOCATION--
REINSTATEMENT.--

A. Upon revoking a certificate of authority, the commission shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail a notice of revocation accompanied by one of the certificates to the corporation at the corporation's mailing address as shown in the most recent annual report filed with the commission.

B. Upon the issuance of the certificate of revocation, the authority of the corporation to transact business in this state shall cease.

C. A corporation administratively revoked under Section 53-17-17 NMSA 1978 may apply to the commission for reinstatement within two years after the effective date of revocation. The application shall:

(1) recite the name of the corporation and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the corporation name satisfies the requirements of Section 53-17-3 NMSA 1978.

D. If the commission determines that the application contains the information required by Subsection C of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

E. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred."

Section 49. Section 53-19-4 NMSA 1978 (being Laws 1993, Chapter 280, Section 4) is amended to read:

"53-19-4. RESERVATION OF NAME.--

A. The exclusive right to use a name may be reserved by:

(1) a person intending to organize a limited liability company and to adopt that name;

(2) a limited liability company or a foreign limited liability company registered in New Mexico that intends to adopt that name;

(3) a foreign limited liability company intending to register in New Mexico and to adopt that name; or

(4) a person intending to organize a foreign limited liability company and to have it registered in New Mexico and to adopt that name.

B. The reservation shall be made by filing with the commission an application executed by the applicant to reserve a specified name. If the commission finds that the name is available for use by a domestic or foreign limited liability company, it shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days after the date the application is filed with the commission.

C. The right to the exclusive use of a reserved name may be transferred to another person by filing with the commission a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name to be transferred and the name and address of the transferee. The transfer shall not extend the term during which the name is reserved."

Section 50. Section 53-19-5 NMSA 1978 (being Laws 1993, Chapter 280, Section 5) is amended to read:

"53-19-5. REGISTERED OFFICE AND REGISTERED AGENT--CHANGE OF PRINCIPAL PLACE OF BUSINESS.--

A. A limited liability company shall maintain in New Mexico:

(1) a registered office that may be the same as the limited liability company's principal place of business; and

(2) a registered agent for service of process on the limited liability company that is either:

(a) an individual resident of New Mexico;

(b) a domestic corporation, limited liability company or partnership having a place of business in New Mexico that is the same as the registered office; or

(c) a foreign corporation, limited liability company or partnership authorized to transact business in New Mexico having a place of business that is the same as the registered office.

B. A limited liability company may change its registered office or registered agent by delivering to the commission a statement setting forth:

(1) the name of the limited liability company;

(2) the name of its current registered agent;

(3) the street address of its current registered office; and

(4) if its current registered agent is to be changed:

(a) the name of its successor registered agent;

(b) the street address of the successor registered agent's place of business;

(c) a statement that such address is the same as the current address of the limited liability company's current registered office or, if there is a concurrent change in the address of the registered office, as the new address of the registered office; and

(d) the statement of the successor registered agent that the agent accepts the appointment;

(5) if the current address of the place of business of its current registered agent is to be changed, the new street address of the place of business of the current registered agent and a statement that the new street address is the same as the address of the limited liability company's registered office or, if there is a concurrent change in the address of the registered office, as the new street address of the registered office; or

(6) if the address of its current registered office is to be changed, the new street address to which the current registered office is to be changed and a

statement that the new address is the same as the street address of the place of business of the current or, if there is a concurrent change of the current registered agent, of the successor registered agent of the limited liability company.

C. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any limited liability company corporation for which the registered agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission for filing a statement that complies with the requirements of this section but need not be responsive to Paragraph (4) of Subsection B of this section and recites that the corporation has been notified of the change.

D. If the public regulation commission finds that the statement conforms to the provisions of this section, it shall file the statement in its office and, upon such filing, the change of registered agent, change of address of the registered office or change of the registered agent's place of business shall become effective and fulfill any requirement that such change be reported to the commission.

E. A registered agent of a limited liability company may resign as registered agent by delivering a written notice, executed in duplicate, to the public regulation commission, which shall mail a copy of the notice to the limited liability company at its principal place of business as shown on the records of the commission. The resigning registered agent's appointment terminates thirty days after receipt of the notice by the commission or on the effective date of the appointment of a successor registered agent, whichever occurs first.

F. A limited liability company shall notify the public regulation commission of a change in the street address of its principal place of business by delivering a written statement to the commission setting forth such change."

Section 51. Section 53-19-8 NMSA 1978 (being Laws 1993, Chapter 280, Section 8, as amended) is amended to read:

"53-19-8. ARTICLES OF ORGANIZATION.--The articles of organization shall set forth:

A. a name for the limited liability company that satisfies the requirements of Section 53-19-3 NMSA 1978;

B. the street address of the initial registered office and the name of the initial registered agent at that address and the street address of the limited liability company's current principal place of business, if different from the address of its registered office;

C. the period of duration, if other than perpetual;

D. if management of the limited liability company is vested to any extent in a manager, a statement to that effect;

E. if the limited liability company may carry on its business and affairs as a single member limited liability company, a statement to that effect; and

F. any other provision that the persons signing the articles choose to include in the articles, including provisions for the regulation of the internal affairs of the limited liability company."

Section 52. Section 53-19-9 NMSA 1978 (being Laws 1993, Chapter 280, Section 9, as amended) is amended to read:

"53-19-9. FILING.--

A. The organizer or organizers of a limited liability company shall file with the commission:

(1) the signed original of the articles of organization, together with a duplicate copy, which may be either signed, photocopied or conformed;

(2) the statement of the person appointed registered agent, accepting appointment as registered agent; and

(3) any other documents required to be filed pursuant to the Limited Liability Company Act.

B. The commission may accept a facsimile transmission for filing.

C. If the commission determines that the documents delivered for filing conform with the provisions of the Limited Liability Company Act, it shall, when all required filing fees have been paid:

(1) endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(2) retain a signed original in the files of the commission; and

(3) return each duplicate copy to the person who delivered it to the commission or to that person's representative."

Section 53. Section 53-19-39 NMSA 1978 (being Laws 1993, Chapter 280, Section 39, as amended) is amended to read:

"53-19-39. DISSOLUTION.--

A. A limited liability company is dissolved upon the happening of any of the following events:

(1) an event specified in the articles of organization or an operating agreement;

(2) except as otherwise provided in the articles of organization or an operating agreement, upon the written consent of members having a majority share of the voting power of all members; or

(3) entry of a decree of judicial dissolution pursuant to Section 53-19-40 NMSA 1978.

B. On the dissolution of the limited liability company, the limited liability company shall cease to carry on its business and affairs, except insofar as necessary for winding up the company's business and affairs, but its legal existence shall continue until all its business and affairs are wound up."

Section 54. Section 53-19-48 NMSA 1978 (being Laws 1993, Chapter 280, Section 48, as amended) is amended to read:

"53-19-48. REGISTRATION.--Before transacting business in New Mexico, a foreign limited liability company shall register with the commission by submitting an original signed application for registration as a foreign limited liability company, together with a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, executed by a person with authority to do so under the laws of the state or other jurisdiction of its organization and a certificate of good standing and compliance issued by the appropriate official of the state or jurisdiction under the laws of which the organization is organized, current within thirty days and that has not expired at time of receipt by the commission. The application shall set forth:

A. the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in New Mexico;

B. the state or other jurisdiction where the foreign limited liability company was organized and the date of its organization;

C. the name and address of a registered agent for service of process, which agent meets the requirements of Section 53-19-5 NMSA 1978, whose original, signed statement, together with a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, to the effect that such person accepts designation as the registered agent of the foreign limited liability company, shall be submitted with the application;

D. a statement that the secretary of state is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed

upon resignation of an already appointed registered agent or, if appointed, the agent's authority has been revoked or the agent cannot be found or served in the exercise of reasonable diligence;

E. the address of the office required to be maintained in the state or other jurisdiction of its organization by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company;

F. a statement that the foreign limited liability company is a foreign limited liability company as defined in Section 53-19-2 NMSA 1978; and

G. the identity of persons in whom management of the foreign limited liability company is vested."

Section 55. Section 53-19-49 NMSA 1978 (being Laws 1993, Chapter 280, Section 49) is amended to read:

"53-19-49. ISSUANCE OF REGISTRATION.--If the commission determines that the application for registration from a foreign limited liability company conforms to the provisions of the Limited Liability Company Act and all requisite fees have been paid, the commission shall:

A. endorse on the signed original and each copy the word "filed" and the date of its acceptance for filing;

B. retain a signed original in the files of the commission; and

C. return each copy to the person who delivered it to the commission or to that person's representative."

Section 56. Section 53-19-60 NMSA 1978 (being Laws 1995, Chapter 213, Section 8, as amended) is amended to read:

"53-19-60. CONVERSIONS AND MERGERS--CONVERSION OF CORPORATION, PARTNERSHIP OR LIMITED PARTNERSHIP TO LIMITED LIABILITY COMPANY.--

A. A corporation, partnership or limited partnership may be converted to a limited liability company pursuant to this section.

B. The terms and conditions of a conversion of a corporation, partnership or limited partnership to a limited liability company shall be approved in the manner specifically provided for by the document, instrument, agreement or other writing governing the internal affairs of the corporation, partnership or limited partnership

concerning conversions or, in the absence of such a provision, by all of the shareholders or partners, as the case may be.

C. An agreement of conversion shall set forth the terms and conditions of the conversion of the owners' interests in the converting entity into interests in the converted entity or the cash or other consideration to be paid or delivered as a result of the conversion of the owners' interests or a combination of these.

D. After a conversion is approved pursuant to Subsection B of this section, the corporation, partnership or limited partnership being converted shall file articles of organization with the commission that satisfy the requirements of Section 53-19-8 NMSA 1978 and a statement containing the items set forth below:

(1) a statement that the corporation or partnership was converted to a limited liability company from a corporation, partnership or limited partnership;

(2) its former name;

(3) a statement of the number of votes cast by the shareholders or partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion pursuant to Subsection B of this section; and

(4) in the case of a corporation or a limited partnership, a statement that the certificate of incorporation or certificate of limited partnership is to be canceled as of the date the conversion takes effect.

E. In the case of a corporation or a limited partnership, the filing of articles of organization pursuant to Subsection D of this section cancels its certificate of incorporation or certificate of limited partnership as of the date the conversion took effect.

F. A conversion takes effect when articles of organization are filed with the commission or at any later date specified in the articles of organization.

G. A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

H. A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion took effect."

Section 57. Section 53-19-60.1 NMSA 1978 (being Laws 2001, Chapter 200, Section 79) is amended to read:

"53-19-60.1. CONVERSIONS AND MERGERS--CONVERSION OF LIMITED LIABILITY COMPANY TO CORPORATION, PARTNERSHIP OR LIMITED PARTNERSHIP.--

A. A limited liability company may be converted to a corporation, partnership or limited partnership pursuant to this section.

B. The terms and conditions of a conversion of a limited liability company to a corporation, partnership or limited partnership shall be approved by the number or percentage of the members or managers specifically required for conversion in the operating agreement or, in absence of such a provision in the operating agreement, by all the members.

C. An agreement of conversion shall set forth the terms and conditions of the conversion of the members' interests in the limited liability company into interests in the corporation, partnership or limited partnership or the cash or other consideration to be paid or delivered as a result of the conversion of the members' interests, or a combination of these.

D. After a conversion is approved under Subsection B of this section, the limited liability company shall file with the commission, if the converted entity is a partnership, a statement containing the items set forth below, if the converted entity is a corporation, articles of incorporation and a statement containing the items set forth below and, if the converted entity is a limited partnership, a certificate of limited partnership and a statement containing the items set forth below:

(1) a statement that the corporation, partnership or limited partnership was converted from a limited liability company;

(2) the former name of the limited liability company;

(3) a statement of the number of votes cast by the members or managers entitled to vote for and against the conversion and, if the vote is other than a unanimous vote of the members, the number or percentage of members or managers required to approve the conversion under Subsection B of this section; and

(4) a statement that the articles of organization of the limited liability company are to be canceled as of the date the conversion takes effect.

E. The filing of articles of incorporation for a corporation, a statement for a partnership or a certificate of limited partnership for a limited partnership resulting from a conversion pursuant to this section, cancels the articles of organization of the limited liability company as of the date the conversion takes effect.

F. A conversion takes effect when articles of incorporation, a certificate of limited partnership or statement required if the converted entity is a partnership, are filed with the commission or at any later date specified in the filed document."

Section 58. Section 53-19-62 NMSA 1978 (being Laws 1995, Chapter 213, Section 10) is amended to read:

"53-19-62. CONVERSIONS AND MERGER OF ENTITIES.--

A. Pursuant to a plan of merger approved under Subsection C of this section, a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities.

B. A plan of merger shall set forth:

- (1) the name of each entity that is a party to the merger;
- (2) the name of the surviving entity into which the other entities will merge;
- (3) the type of organization of the surviving entity;
- (4) the terms and conditions of the merger;
- (5) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or in part; and
- (6) the street address of the surviving entity's principal place of business.

C. A plan of merger shall be approved:

- (1) in the case of a limited liability company that is a party to the merger, by the members representing the percentage of voting power of all members specified in the operating agreement for approval of mergers, but not fewer than the members holding a majority of the voting power of all members or, if provision is not made in the operating agreement, by all the members;
- (2) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(3) in the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under Subsection B of Section 53-19-60 NMSA 1978; and

(4) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the other state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger is effective upon the filing of the articles of merger with the commission or at such later date as the articles may provide."

Section 59. Section 53-19-63 NMSA 1978 (being Laws 1993, Chapter 280, Section 63, as amended) is amended to read:

"53-19-63. FILING, SERVICE AND COPYING FEES.--The public regulation commission shall charge and collect:

A. for filing the original articles of organization and issuing a certificate of organization, a fee of fifty dollars (\$50.00);

B. for filing amended or restated articles of merger and issuing a certificate of amended or restated articles, a fee of fifty dollars (\$50.00);

C. for filing articles of merger, conversion or consolidation and issuing a certificate of consolidation, a fee of one hundred dollars (\$100);

D. for filing articles of dissolution or revocation of dissolution, a fee of twenty-five dollars (\$25.00);

E. for issuing a certificate for any purpose not otherwise specified, a fee of twenty-five dollars (\$25.00);

F. for furnishing written information on any limited liability company, a fee of twenty-five dollars (\$25.00);

G. for providing from the commission's records any document or instrument, a fee of one dollar (\$1.00) per page, but in one case less than ten dollars (\$10.00), and a fee of twenty-five dollars (\$25.00) for certification of documents or instruments;

H. for accepting an application for reservation of a name or for filing a notice of the transfer of any name reservation, a fee of twenty dollars (\$20.00);

I. for filing a statement of change of address of registered office or registered agent, or both, a fee of twenty dollars (\$20.00);

J. for filing an agent's statement of change of address of registered agent for each affected limited liability company, twenty dollars (\$20.00);

K. for issuing a registration to a foreign limited liability company, a fee of one hundred dollars (\$100);

L. for filing an amendment of the registration of a foreign limited liability company, a fee of fifty dollars (\$50.00); and

M. for filing an application for cancellation of registration of a foreign limited liability company and issuing a certificate of cancellation, a fee of twenty-five dollars (\$25.00)."

Section 60. Section 53-20-6 NMSA 1978 (being Laws 2001, Chapter 200, Section 88) is amended to read:

"53-20-6. APPLICATION FOR CERTIFICATE OF AUTHORITY.--

A. A foreign business trust, in order to obtain a certificate of authority to transact business in this state, shall make application to the public regulation commission. The application shall set forth:

(1) the name of the foreign business trust and, if different, the name under which it proposes to transact business in this state;

(2) the date of declaration of trust;

(3) the address of the principal office of the foreign business trust in the state or country under the laws of which it is organized;

(4) the address of the registered office of the foreign business trust in this state, the name of its registered agent in this state at that address and an acceptance of the appointment signed by the agent appointed; and

(5) the purposes of the foreign business trust that it proposes to pursue in the transaction of business in this state.

B. The application shall be made on forms prescribed and furnished by the public regulation commission or on forms containing substantially the same information as forms prescribed by the commission and shall be executed by a person with authority to do so under the laws of the state or jurisdiction of its formation.

C. A foreign business trust shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of trust records in the state or jurisdiction under whose law it is created."

Section 61. Section 53-20-10 NMSA 1978 (being Laws 2001, Chapter 200, Section 92) is amended to read:

"53-20-10. REGISTERED OFFICE AND REGISTERED AGENT--CHANGE--
RESIGNATION OF REGISTERED AGENT.--

A. A foreign business trust authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing with the public regulation commission a statement setting forth:

- (1) the name of the foreign business trust;
- (2) the address of its registered office;
- (3) if the address of its registered office is changed, the address to which it is to be changed;
- (4) the name of the foreign business trust's registered agent;
- (5) if its registered agent is changed, the name of the successor registered agent;
- (6) a statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- (7) that the change was authorized by resolution duly adopted by its trustees.

B. The statement shall be executed by the foreign business trust by an authorized person and delivered to the public regulation commission. If the commission finds that the statement meets the requirements of this section, it shall file the statement, and, when filed, the change of address of the registered office or the appointment of the new registered agent, or both, shall become effective. A registered agent of a foreign business trust may resign as registered agent by filing a written notice of resignation with the commission, and the commission shall mail immediately a copy of the notice to the foreign business trust at its principal office in the state or country under the laws of which it is organized. The appointment of the agent terminates upon the expiration of thirty days after receipt of the notice by the commission.

C. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the

registered office of any foreign business trust for which the registered agent is the registered agent by notifying the foreign business trust in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission for filing a statement that complies with the requirements of this section but need not be responsive to Paragraph (5) of Subsection A of this section and recites that the foreign business trust has been notified of the change."

Section 62. Section 53-20-12 NMSA 1978 (being Laws 2001, Chapter 200, Section 94) is amended to read:

"53-20-12. CERTIFICATE OF WITHDRAWAL--APPLICATION AND FILING.--

A. A foreign business trust authorized to transact business in this state may withdraw from this state upon obtaining from the public regulation commission a certificate of withdrawal. To obtain the certificate, the foreign business trust shall deliver to the commission an application for withdrawal. The application shall set forth:

(1) the name of the foreign business and the state or country under the laws of which it is organized;

(2) that the foreign business trust is not transacting business in this state;

(3) that the foreign business trust surrenders its authority to transact business in this state;

(4) that the foreign business trust revokes the authority of its registered agent in this state to accept service of process and consents that service of process in an action, suit or proceeding based on a cause of action arising in this state during the time the foreign business trust was authorized to transact business in this state may thereafter be made on the foreign business trust by service on the secretary of state;

(5) an address to which the secretary of state may mail a copy of any process against the foreign business trust served on the secretary of state;

(6) a commitment to notify the commission in the future of any change in its mailing address; and

(7) additional information necessary or appropriate to enable the commission to determine and assess any unpaid fees or taxes payable by the foreign business trust.

B. The application for withdrawal shall be made on forms prescribed and furnished by the public regulation commission or on forms containing substantially the same information as forms prescribed by the commission and shall be executed by the

trust by an authorized person, or if the foreign business trust is in the hands of a receiver or trustee, by the receiver or trustee."

Section 63. Section 53-20-17 NMSA 1978 (being Laws 2001, Chapter 200, Section 99) is amended to read:

"53-20-17. FEES.--The public regulation commission shall charge and collect from a foreign business trust for:

A. filing a statement of change of address of registered office or change of registered agent, or both, twenty-five dollars (\$25.00);

B. filing an application of a foreign business trust for a certificate of authority to transact business in this state and issuing a certificate of authority, two hundred fifty dollars (\$250);

C. filing an agent's statement of change of address of registered agent for each affected corporation, twenty-five dollars (\$25.00);

D. filing a certificate of correction or amendment of a foreign business trust authorized to transact business in this state, fifty dollars (\$50.00);

E. filing an application for withdrawal of a foreign business trust and issuing a certificate of withdrawal, twenty-five dollars (\$25.00);

F. filing any other statement of a foreign business trust, twenty-five dollars (\$25.00); and

G. for furnishing a certified copy of any document, instrument or paper relating to a foreign business trust, one dollar (\$1.00) per page and ten dollars (\$10.00) for the certificate and affixing the seal thereto."

Section 64. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 379, AS AMENDED

CHAPTER 319

CHAPTER 319, LAWS 2003

AN ACT

ALLOWING THE SECRETARY OF FINANCE AND ADMINISTRATION TO DRAW FROM THE OPERATING RESERVE TO PROVIDE MATCHING FUNDS FOR SOIL AND WATER CONSERVATION PROJECTS PURSUANT TO A FEDERAL-STATE AGREEMENT; MAKING A CONTINGENT APPROPRIATION.

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

Section 1. SECRETARY OF FINANCE AND ADMINISTRATION--CONTINGENT APPROPRIATION.--The secretary of finance and administration is authorized to draw from the general fund operating reserve up to nine hundred seventy-two thousand dollars (\$972,000) as necessary in fiscal year 2004 to match federal funds for water conservation and natural resource restoration technical assistance in accordance with an agreement entered into between the United States department of agriculture's natural resources conservation service and the soil and water conservation commission. Upon certification by the soil and water conservation commission that federal money has been made available to the state for the purposes specified in the agreement and that state money is ready for expenditure, the secretary of finance and administration shall release the money to the board of regents of New Mexico state university for expenditure in fiscal year 2004 for the soil and water conservation districts. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund operating reserve.

SENATE FINANCE COMMITTEE

SUBSTITUTE FOR SENATE BILL 385

CHAPTER 320

CHAPTER 320, LAWS 2003

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE PUBLIC SAFETY TELECOMMUNICATOR TRAINING ACT; PROVIDING RULES AND PROCEDURES FOR TELECOMMUNICATOR TRAINING, CERTIFICATION AND CONTINUING EDUCATION; DEFINING POWERS AND DUTIES OF THE BOARD AND THE

DIRECTOR OF THE NEW MEXICO LAW ENFORCEMENT ACADEMY; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 29-7-4 NMSA 1978 (being Laws 1969, Chapter 264, Section 6, as amended) is amended to read:

"29-7-4. POWERS AND DUTIES OF BOARD.--The board shall:

A. approve or disapprove the appointment of the director by the secretary;

B. develop and implement a planned program of:

(1) basic law enforcement training and in-service law enforcement training, a portion of which may be conducted on a regional basis; and

(2) basic telecommunicator training and in-service telecommunicator training, as provided in the Public Safety Telecommunicator Training Act, a portion of which may be conducted on a regional basis;

C. prescribe qualifications for instructors and prescribe courses of instruction for:

(1) basic law enforcement training and in-service law enforcement training; and

(2) basic telecommunicator training and in-service telecommunicator training, as provided in the Public Safety Telecommunicator Training Act;

D. report annually to the governor;

E. in its discretion, accept donations, contributions, grants or gifts from whatever source for the benefit of the academy, which donations, contributions, grants or gifts are appropriated for the use of the academy;

F. adopt, publish and file, in accordance with the provisions of the State Rules Act, all regulations and rules concerning the operation of the academy and the implementation and enforcement of the provisions of the Law Enforcement Training Act and the Public Safety Telecommunicator Training Act;

G. issue, grant, deny, renew, suspend or revoke a: (1)
peace officer's certification for any cause set forth in the provisions of the Law Enforcement Training Act; and

(2) telecommunicator's certification for any just cause set forth in the Public Safety Telecommunicator Training Act;

H. administer oaths, subpoena persons and take testimony on any matter within the board's jurisdiction; and

I. perform all other acts appropriate to the development and operation of the academy."

Section 2. Section 29-7-5 NMSA 1978 (being Laws 1969, Chapter 264, Section 7, as amended) is amended to read:

"29-7-5. POWERS AND DUTIES OF THE DIRECTOR.--The director shall:

A. be the chief executive officer of the academy and employ necessary personnel;

B. issue a certificate of completion to any person who:

(1) graduates from an approved basic law enforcement training program and who satisfies the qualifications for certification as set forth in Section 29-7-6 NMSA 1978; or

(2) graduates from an approved basic telecommunicator training program and who satisfies the qualifications for certification as set forth in the Public Safety Telecommunicator Training Act;

C. perform all other acts necessary and appropriate to the carrying out of his duties;

D. act as executive secretary to the board;

E. carry out the policy as set by the board; and

F. annually evaluate the courses of instruction being offered by the academy and make necessary modifications and adjustments to the programs."

Section 3. SHORT TITLE.--Sections 3 through 11 of this act may be cited as the "Public Safety Telecommunicator Training Act".

Section 4. DEFINITIONS.--As used in the Public Safety Telecommunicator Training Act:

A. "board" means the New Mexico law enforcement academy board;

B. "certified" means meeting the training standards established by statute and rule as determined by the board;

C. "director" means the director of the New Mexico law enforcement academy;

D. "dispatch" means the relay of information to public safety personnel by all forms of communication;

E. "safety agency" means a unit of state or local government, a special purpose district or a private business that provides police, firefighting or emergency medical services; and

F. "telecommunicator" means an employee or volunteer of a safety agency who:

(1) receives calls or dispatches the appropriate personnel or equipment in response to calls for police, fire or medical services; and

(2) makes decisions affecting the life, health or welfare of the public or safety employees.

Section 5. QUALIFICATIONS FOR CERTIFICATION.--An applicant for certification shall provide evidence satisfactory to the board that he:

A. is a citizen or legal resident of the United States and has reached the age of majority;

B. holds a high school or general equivalency diploma from an accredited institution;

C. has not been convicted of, pled guilty to or entered a plea of nolo contendere to a:

(1) felony charge; or

(2) violation of a federal or state law, a local ordinance relating to aggravated assault or theft or a law involving moral turpitude within the three-year period immediately preceding his application;

D. has not received a dishonorable discharge from the armed forces of the United States;

E. is free from a physical, emotional or mental condition that might adversely affect his performance;

F. is of good moral character;

G. has met all other requirements for certification prescribed by the board;
and

H. has received a certificate attesting to his completion of an approved basic telecommunicator training program from the director.

Section 6. BASIC TELECOMMUNICATOR TRAINING PROGRAM.--
The board shall develop and adopt a basic telecommunicator training program for telecommunicator certification. The program shall be constructed to meet the minimum basic needs of telecommunicators in New Mexico.

Section 7. MINIMUM TRAINING STANDARDS FOR CERTIFICATION.-

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A. A telecommunicator shall satisfy the qualifications for certification set forth in the Public Safety Telecommunicator Training Act within twelve months after beginning employment and shall provide a certificate of completion to the director.

B. The director shall waive the training requirements set forth in Subsection A of this section for a police radio dispatcher who is certified as a police radio dispatcher and has met all other requirements set forth by the board.

Section 8. CERTIFICATION BY WAIVER.--

A. The director shall waive the basic telecommunicator training program and certify applicants who furnish evidence of satisfactory completion of a basic telecommunicator training program that, in the director's opinion, is substantially equivalent to the board's basic telecommunicator training program.

B. A telecommunicator granted a waiver under this section shall meet all other requirements set out in the Public Safety Telecommunicator Training Act.

Section 9. IN-SERVICE TELECOMMUNICATOR TRAINING.--

A. In-service telecommunicator training consists of at least twenty hours of board-approved advanced training for each certified telecommunicator during each two-year period. The first training course shall commence no later than twelve months after graduation from a board-approved basic telecommunicator training program.

B. A certified telecommunicator shall provide proof of completion of in-service training requirements to the director no later than March 1 of the year

subsequent to the year in which the requirements are met. The director shall provide annual notice to all certified telecommunicators regarding in-service training requirements. Failure to complete in-service training requirements may be grounds for suspension of a telecommunicator's certification at the director's discretion. A telecommunicator may be reinstated at the discretion of the director when the telecommunicator presents to the director evidence he has satisfied the in-service training requirements.

Section 10. REPORTS AND ROSTERS.--

A. A safety agency that operates within the state shall submit a quarterly report to the director on the status of each telecommunicator. The reporting forms and submittal dates shall be prescribed by the director.

B. The director shall maintain a roster of all certified telecommunicators.

Section 11. REFUSAL, SUSPENSION OR REVOCATION OF CERTIFICATION.--

A. The board shall refuse to issue or shall suspend or revoke a telecommunicator's certification, after consultation with his employing safety agency, if the board determines that a person has:

(1) failed to satisfy the qualifications for certification set forth in Section 29-7A-3 NMSA 1978;

(2) committed acts that constitute dishonesty or fraud;

(3) been convicted of, pled guilty to or entered a plea of nolo contendere to a:

(a) felony charge; or

(b) violation of a federal or state law, a local ordinance relating to aggravated assault or theft or a law involving moral turpitude; or

(4) knowingly made a false statement on his application.

B. The board shall develop, adopt and promulgate administrative procedures for suspension or revocation of a telecommunicator's certification that include:

(1) notice and opportunity for the affected telecommunicator to be heard; and

(2) procedures for review of the board's decision.

Section 12. REPEAL.--Sections 29-7A-1 through 29-7A-7 NMSA 1978 (being Laws 1979, Chapter 228, Sections 1 through 7, as amended) are repealed.

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 386

CHAPTER 321

CHAPTER 321, LAWS 2003

AN ACT

RELATING TO ADOPTIONS; ESTABLISHING PROCEDURES FOR ADOPTIONS ENTERED INTO PURSUANT TO THE FEDERAL INTERCOUNTRY ADOPTION ACT; PROVIDING FOR BACKGROUND CHECKS ON PERSONS WHO PETITION TO ADOPT A CHILD; PROVIDING A PENALTY; AMENDING AND ENACTING SECTIONS OF THE ADOPTION ACT.

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

Section 1. Section 32A-5-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 128) is amended to read:

"32A-5-1. SHORT TITLE.--Chapter 32A, Article 5 NMSA 1978 may be cited as the "Adoption Act"."

Section 2. Section 32A-5-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 130, as amended) is amended to read:

"32A-5-3. DEFINITIONS.--As used in the Adoption Act:

A. "accrediting entity" means an entity that has entered into an agreement with the United States secretary of state pursuant to the federal Intercountry Adoption Act and regulations adopted by the United States secretary of state pursuant to that act, to accredit agencies and approve persons who provide adoption services related to convention adoptions;

B. "adoptivee" means a person who is the subject of an adoption petition;

C. "adoption service" means:

(1) identifying a child for adoption and arranging the adoption of the child;

(2) securing termination of parental rights to a child or consent to adoption of the child;

(3) performing a background study on a child and reporting on the study;

(4) performing a home study on a prospective adoptive parent and reporting on the study;

(5) making determinations regarding the best interests of a child and the appropriateness of an adoptive placement for the child;

(6) performing post-placement monitoring of a child until an adoption is final; and

(7) when there is a disruption before an adoption of a child is final, assuming custody of the child and providing or facilitating the provision of child care or other social services for the child pending an alternative placement of the child;

D. "agency" means a person certified, licensed or otherwise specially empowered by law to place a child in a home in this or any other state for the purpose of adoption;

E. "agency adoption" means an adoption when the adoptee is in the custody of an agency prior to placement;

F. "acknowledged father" means a father who:

(1) acknowledges paternity of the adoptee pursuant to the putative father registry, as provided for in Section 32A-5-20 NMSA 1978;

(2) is named, with his consent, as the adoptee's father on the adoptee's birth certificate;

(3) is obligated to support the adoptee under a written voluntary promise or pursuant to a court order; or

(4) has openly held out the adoptee as his own child by establishing a custodial, personal or financial relationship with the adoptee as follows:

(a) for an adoptee under six months old at the time of placement: 1) has initiated an action to establish paternity; 2) is living with the adoptee at the time the adoption petition is filed; 3) has lived with the mother a minimum of ninety days during the two-hundred-eighty-day-period prior to the birth or placement of the adoptee; 4) has lived with the adoptee within the ninety days immediately preceding the adoptive placement; 5) has provided reasonable and fair financial support to the mother during the pregnancy and in connection with the adoptee's birth in accordance with his means and when not prevented from doing so by the person or authorized agency having lawful custody of the adoptee or the adoptee's mother; 6) has continuously paid child support to the mother since the adoptee's birth in an amount at least equal to the amount provided in Section 40-4-11.1 NMSA 1978, or has brought current any delinquent child support payments; or 7) any other factor the court deems necessary to establish a custodial, personal or financial relationship with the adoptee; or

(b) for an adoptee over six months old at the time of placement: 1) has initiated an action to establish paternity; 2) has lived with the adoptee within the ninety days immediately preceding the adoptive placement; 3) has continuously paid child support to the mother since the adoptee's birth in an amount at least equal to the amount provided in Section 40-4-11.1 NMSA 1978, or is making reasonable efforts to bring delinquent child support payments current; 4) has contact with the adoptee on a monthly basis when physically and financially able and when not prevented by the person or authorized agency having lawful custody of the adoptee; or 5) has regular communication with the adoptee, or with the person or agency having the care or custody of the adoptee, when physically and financially unable to visit the adoptee and when not prevented from doing so by the person or authorized agency having lawful custody of the adoptee;

G. "alleged father" means an individual whom the biological mother has identified as the biological father, but the individual has not acknowledged paternity or registered with the putative father registry as provided for in Section 32A-5-20 NMSA 1978;

H. "consent" means a document:

(1) signed by a biological parent whereby the parent grants consent to the adoption of the parent's child by another; or

(2) whereby the department or an agency grants its consent to the adoption of a child in its custody;

I. "convention adoption" means:

(1) an adoption by a United States resident of a child who is a resident of a foreign country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; or

(2) an adoption by a resident of a foreign country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of a child who is a resident of the United States;

J. "counselor" means a person certified by the department to conduct adoption counseling in independent adoptions;

K. "department adoption" means an adoption when the child is in the custody of the department;

L. "former parent" means a parent whose parental rights have been terminated or relinquished;

M. "full disclosure" means mandatory and continuous disclosure by the investigator, agency, department or petitioner throughout the adoption proceeding and after finalization of the adoption of all known, nonidentifying information regarding the adoptee, including:

- (1) health history;
- (2) psychological history;
- (3) mental history;
- (4) hospital history;
- (5) medication history;
- (6) genetic history;
- (7) physical descriptions;
- (8) social history;
- (9) placement history; and
- (10) education;

N. "independent adoption" means an adoption when the child is not in the custody of the department or an agency;

O. "investigator" means an individual certified by the department to conduct pre-placement studies and post-placement reports;

P. "office" means a place for the regular transaction of business or performance of particular services;

Q. "parental rights" means all rights of a parent with reference to a child, including parental right to control, to withhold consent to an adoption or to receive notice of a hearing on a petition for adoption;

R. "placement" means the selection of a family for an adoptee or matching of a family with an adoptee and physical transfer of the adoptee to the family in all adoption proceedings, except in adoptions filed pursuant to Paragraphs (1) and (2) of Subsection C of Section 32A-5-12 NMSA 1978, in which case placement occurs when the parents consent to the adoption, parental rights are terminated or parental consent is implied;

S. "post-placement report" means a written evaluation of the adoptive family and the adoptee after the adoptee is placed for adoption;

T. "pre-placement study" means a written evaluation of the adoptive family, the adoptee's biological family and the adoptee;

U. "presumed father" means:

(1) the husband of the biological mother at the time the adoptee was born;

(2) an individual who was married to the mother and either the adoptee was born during the term of the marriage or the adoptee was born within three hundred days after the marriage was terminated by death, annulment, declaration of invalidity or divorce; or

(3) before the adoptee's birth, an individual who attempted to marry the adoptee's biological mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid and if the attempted marriage:

(a) could be declared invalid only by a court, the adoptee was born during the attempted marriage or within three hundred days after its termination by death, annulment, declaration of invalidity or divorce; or

(b) is invalid without a court order, the adoptee was born within three hundred days after the termination of cohabitation;

V. "record" means any petition, affidavit, consent or relinquishment form, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, photograph, invoice, receipt, certificate or other printed, written, videotaped or tape-recorded material pertaining to an adoption proceeding;

W. "relinquishment" means the document by which a parent relinquishes parental rights to the department or an agency to enable placement of the parent's child for adoption;

X. "resident" means a person who, prior to filing an adoption petition, has lived in the state for at least six months immediately preceding filing of the petition for adoption or a person who has become domiciled in the state by establishing legal residence with the intention of maintaining the residency indefinitely; and

Y. "stepparent adoption" means an adoption of the adoptee by the adoptee's stepparent when the adoptee has lived with the stepparent for at least one year following the marriage of the stepparent to the custodial parent."

Section 3. Section 32A-5-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 133, as amended) is amended to read:

"32A-5-6. AUTHORITY OF THE DEPARTMENT.--

A. The department may adopt and promulgate necessary rules and forms for the administration of the Adoption Act, including rules for the assessment of fees. The rules shall not conflict with the provisions of the Adoption Act.

B. The department has the authority to provide or request additional information from an investigator or an attorney representing any person involved in any action filed pursuant to the provisions of the Adoption Act.

C. The department has the authority to intervene in any action filed pursuant to the provisions of the Adoption Act. The intervention shall be effected when legal counsel for the department files a motion for an entry of appearance and an appropriate response.

D. The department shall be served by mail by the attorney for the petitioner with copies of all pleadings filed in any action pursuant to the provisions of the Adoption Act, except for copies of the petition for adoption, the request for placement and the decree of adoption, which shall be served as provided in Section 32A-5-7 NMSA 1978.

E. The department is authorized to act as an accrediting entity on behalf of the state.

F. The department may assess fees for the cost of accrediting an agency or approving a person in matters related to convention adoptions. The department shall establish the amount of the fees by rule and the fees shall be subject to approval by the United States secretary of state. The amount of the fees shall not exceed the cost of similar services provided by the department."

Section 4. Section 32A-5-26 NMSA 1978 (being Laws 1993, Chapter 77, Section 153, as amended) is amended to read:

"32A-5-26. PETITION--CONTENT.--A petition for adoption shall be filed and verified by the petitioner and shall allege:

A. the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage; the date and place of any prior marriage, separation or divorce; and the name of any present or prior spouse;

B. the date and place of birth of the adoptee, if known;

C. the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived, unless the adoptee is in the custody of an agency or the department, in which case the petitioner shall state the name and address of the agency or the department's county office from which the child was placed;

D. the birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name; provided that in the case of an agency adoption, if the petitioner and the biological parents have not agreed to the release of the adoptee's identity to the other person, the birth name and any other names by which the adoptee has been known shall be filed with the court as separate documents at the time the petition is filed;

E. where the adoptee is residing at the time of the filing of the petition and, if the adoptee is not living with the petitioner, when the adoptee will commence living with the petitioner;

F. that the petitioner desires to establish a parent and child relationship with the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

G. the existence of any court orders, including placement orders, that are known to the petitioner and that regulate custody, visitation or access to the adoptee, copies of which shall accompany and be attached to the petition as exhibits;

H. the relationship, if any, of the petitioner to the adoptee;

I. the name and address of the placing agency, if any;

J. the names and addresses of all persons from whom consents or relinquishments are required, attaching copies of those obtained and alleging the facts that excuse or imply the consents or relinquishments of the others; provided that if the petitioner has not agreed to the release of his identity to the parent or if the parent has not agreed to the release of his identity to the petitioner, the names and addresses of all

persons from whom consents or relinquishments are required shall be filed with the court as separate documents at the time the petition for adoption is filed;

K. whether the adoption will be an open adoption, pursuant to the provisions of Section 32A-5-35 NMSA 1978;

L. when consent of the child's father is alleged to be unnecessary, the results of a search of the putative father registry;

M. whether the adoptee is an Indian child and, if so, the petition shall allege:

(1) the tribal affiliation of the adoptee's parents;

(2) what specific actions have been taken and by whom to notify the parents' tribe and the results of the contact, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribe shall be attached as exhibits to the petition; and

(3) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribe;

N. whether the adoption is subject to the Interstate Compact on the Placement of Children and, if so, a copy of the interstate compact form indicating approval shall be attached as an exhibit to the petition;

O. whether the adoptee is foreign-born and, if so, copies of the child's passport and United States visa and of all documents demonstrating that the adoptee is legally free for adoption, including a certificate from the United States secretary of state that certifies that the adoption is a convention adoption;

P. whether the adoption is a convention adoption and, if so, the petition shall allege:

(1) that the country in which the child has been residing is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;

(2) that the agency or person who is providing the adoption service has been approved as an accrediting entity; and

(3) that the certificate issued by the United States secretary of state that certifies the adoption as a convention adoption has been filed with the court; and

Q. the name, address and telephone number of the agency or individual who has agreed to conduct the post-placement report in accordance with Section 32A-5-31 NMSA 1978, if different than the agency or individual who prepared the pre-placement study in accordance with Section 32A-5-13 NMSA 1978."

Section 5. Section 32A-5-36 NMSA 1978 (being Laws 1993, Chapter 77, Section 163, as amended) is amended to read:

"32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF ADOPTION.--

A. The court shall conduct hearings on the petition for adoption so as to determine the rights of the parties in a manner that protects confidentiality. The petitioner and the adoptee shall attend the hearing unless the court for good cause waives a party's appearance. Good cause may include burdensome travel requirements.

B. The petitioner shall file all documents required pursuant to the Adoption Act and serve the department with copies of the documents simultaneously with the request for hearing on the petition for adoption.

C. If any person who claims to be the biological father of the adoptee has appeared before the court and filed a written petition or response seeking custody and assuming financial responsibility of the adoptee, the court shall hear evidence as to the merits of the petition. If the court determines by a preponderance of the evidence that the person is not the biological father of the adoptee or that the child was conceived through an act of rape or incest, the petition shall be dismissed and the person shall no longer be a party to the adoption. If the court determines that the person is the biological father of the adoptee, the court shall further determine whether the person qualifies as a presumed or acknowledged father whose consent is necessary for adoption, pursuant to Section 32A-5-17 NMSA 1978. If the court determines that the person is the biological father, but does not qualify as a presumed or acknowledged father, the court shall adjudicate the person's rights pursuant to the provisions of the Adoption Act.

D. If the mother or father of the adoptee has appeared before the court and filed a written petition that alleges the invalidity of the mother's or father's own consent or relinquishment for adoption previously filed in the adoption proceeding, the court shall hear evidence as to the merits of the petition. If the court determines that the allegations have not been proved by a preponderance of the evidence, the petition shall be dismissed. If the court determines that the allegations of the petition are true, the consent or relinquishment for adoption shall be held invalid, and the court shall determine, in the best interests of the adoptee, the person who shall have custody of the child.

E. The petitioner shall present and prove each allegation set forth in the petition for adoption by clear and convincing evidence.

F. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

(1) the court has jurisdiction to enter a decree of adoption affecting the adoptee;

(2) the adoptee has been placed with the petitioner for a period of ninety days if the adoptee is under the age of one year at the time of placement or for a period of one hundred eighty days if the adoptee is one year of age or older at the time of placement, unless, for good cause shown, the requirement is waived by the court;

(3) all necessary consents, relinquishments, terminations or waivers have been obtained;

(4) the post-placement report required by Section 32A-5-31 NMSA 1978 has been filed with the court;

(5) service of the petition for adoption has been made or dispensed with as to all persons entitled to notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

(6) at least ninety days have passed since the filing of the petition for adoption, except the court may shorten or waive this period of time in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to provisions of Section 32A-5-12 NMSA 1978;

(7) the petitioner is a suitable adoptive parent and the best interests of the adoptee are served by the adoption;

(8) if visitation between the biological family and the adoptee is contemplated, that the visitation is in the child's best interests;

(9) if the adoptee is foreign-born, the child is legally free for adoption and a certificate issued by the United States secretary of state that certifies the adoption as a convention adoption has been filed with the court;

(10) the results of the criminal records check required pursuant to provisions of the Adoption Act have been received and considered;

(11) if the adoptee is an Indian child, the requirements set forth in the federal Indian Child Welfare Act of 1978 have been met;

(12) when the child is an Indian child, the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes have been followed or, if not followed, good cause for noncompliance has been clearly stated and supported, as required by the federal Indian

Child Welfare Act of 1978 and provision has been made to ensure that the Indian child's cultural ties to the Indian child's tribe are protected and fostered; and

(13) if the adoption involves the interstate placement of the adoptee, the requirements of the Interstate Compact on the Placement of Children have been met.

G. In addition to the findings required by Subsection F of this section, the court in any decree of adoption shall make findings with respect to each allegation of the petition.

H. If the court determines that any of the requirements for a decree of adoption pursuant to provisions of Subsections E and F of this section have not been met or that the adoption is not in the best interests of the adoptee, the court shall deny the petition and determine, in the best interests of the adoptee, the person who shall have custody of the child.

I. The decree of adoption shall include the new name of the adoptee and shall not include any other name by which the adoptee has been known or the names of the former parents. The decree of adoption shall order that from the date of the decree, the adoptee shall be the child of the petitioner and accorded the status set forth in Section 32A-5-37 NMSA 1978.

J. A decree of adoption shall be entered within six months of the filing of the petition if the adoptee is under the age of one year at the time of placement or twelve months if the adoptee is one year of age or older at the time of placement, except that the time may be extended by the court upon request of any of the parties or upon the court's own motion for good cause shown.

K. A decree of adoption may not be attacked upon the expiration of one year from the entry of the decree; provided, however, that in any adoption involving an Indian child, the Indian child's parent or Indian custodian may petition the court pursuant to the provisions of the federal Indian Child Welfare Act of 1978 to invalidate the adoption.

L. In any adoption involving an Indian child, the clerk of the court shall provide the secretary of the interior with a copy of any decree of adoption or adoptive placement order and other information as required by the federal Indian Child Welfare Act of 1978."

Section 6. Section 32A-5-39 NMSA 1978 (being Laws 1993, Chapter 77, Section 166) is amended to read:

"32A-5-39. RECOGNITION OF FOREIGN DECREES.--

A. Every judgment terminating the parent-child relationship or establishing the relationship of parent and child by adoption issued pursuant to due process of law by the tribunals of any other jurisdiction within or without the United States shall be recognized in this state, so that the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the judgment were issued by the courts of this state.

B. A convention adoption in a foreign country that is certified by the United States secretary of state shall be recognized as a final adoption in this state."

Section 7. A new section of the Adoption Act is enacted to read:

"APPLICATION OF THE FEDERAL INTERCOUNTRY ADOPTION ACT.--The protections and requirements set forth in the federal Intercountry Adoption Act apply to all proceedings involving a convention adoption."

Section 8. A new section of the Adoption Act is enacted to read:

"CRIMINAL HISTORY RECORDS CHECK--BACKGROUND CHECKS.--

A. A nationwide criminal history records check shall be conducted on every person who files a petition to adopt a child. A person who files a petition to adopt a child shall provide the department with a set of fingerprints. The department is authorized to use the set of fingerprints to conduct a background check of the petitioner by submitting the fingerprints to the department of public safety and the federal bureau of investigation.

B. Criminal history records obtained by the department pursuant to the provisions of this section are confidential. Criminal history records obtained pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

C. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE
FOR SENATE BILL 397, AS AMENDED

CHAPTER 322

CHAPTER 322, LAWS 2003

AN ACT

RELATING TO LOCAL GOVERNMENTS; REQUIRING CERTAIN ELEMENTS IN COMPREHENSIVE PLANS FOR COUNTIES THAT ADOPT SUBDIVISION REGULATIONS MORE STRICT THAN THOSE IN THE NEW MEXICO SUBDIVISION ACT.

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

Section 1. Section 47-6-9 NMSA 1978 (being Laws 1973, Chapter 348, Section 9, as amended) is amended to read:

"47-6-9. SUBDIVISION REGULATION--COUNTY AUTHORITY.--

A. The board of county commissioners of each county shall regulate subdivisions within the county's boundaries. In regulating subdivisions, the board of county commissioners of each county shall adopt regulations setting forth the county's requirements for:

(1) preliminary and final subdivision plats, including their content and format;

(2) quantifying the maximum annual water requirements of subdivisions, including water for indoor and outdoor domestic uses;

(3) assessing water availability to meet the maximum annual water requirements of subdivisions;

(4) water conservation measures;

(5) water of an acceptable quality for human consumption and for protecting the water supply from contamination;

(6) liquid waste disposal;

(7) solid waste disposal;

(8) legal access to each parcel;

(9) sufficient and adequate roads to each parcel, including ingress and egress for emergency vehicles;

(10) utility easements to each parcel;

(11) terrain management;

(12) phased development;

(13) protecting cultural properties, archaeological sites and unmarked burials, as required by the Cultural Properties Act;

(14) specific information to be contained in a subdivider's disclosure statement in addition to that required in Section 47-6-17 NMSA 1978;

(15) reasonable fees approximating the cost to the county of determining compliance with the New Mexico Subdivision Act and county subdivision regulations while passing upon subdivision plats;

(16) a summary procedure for reviewing certain type-three and all type-five subdivisions as provided in Section 47-6-11 NMSA 1978;

(17) recording all conveyances of parcels with the county clerk;

(18) financial security to assure the completion of all improvements that the subdivider proposes to build or to maintain;

(19) fencing subdivided land, where appropriate, in conformity with Section 77-16-1 NMSA 1978, which places the duty on the purchaser, lessee or other person acquiring an interest in the subdivided land to fence out livestock; and

(20) any other matter relating to subdivisions that the board of county commissioners feels is necessary to promote health, safety or the general welfare.

B. Subsection A of this section does not preempt the authority of any state agency to regulate or perform any activity that it is required or authorized by law to perform.

C. Nothing in the New Mexico Subdivision Act shall be construed to limit the authority of counties to adopt subdivision regulations with requirements that are more stringent than the requirements set forth in the New Mexico Subdivision Act, provided that:

(1) the county has adopted a comprehensive plan in accordance with Section 3-21-5 NMSA 1978;

(2) the comprehensive plan contains goals, objectives and policies that identify and explain the need for requirements that are more stringent; and

(3) the more stringent regulations are specifically identified in the comprehensive plan."

SENATE CONSERVATION COMMITTEE SUBSTITUTE
FOR SENATE BILL 410, AS AMENDED,
WITH CERTIFICATE OF CORRECTION

CHAPTER 323

CHAPTER 323, LAWS 2003

AN ACT

RELATING TO PUBLIC HEALTH; CREATING AN INFORMATION AND REFERRAL TASK FORCE.

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

Section 1. INFORMATION AND REFERRAL TASK FORCE CREATION.--There is created an information and referral task force located in the developmental disabilities planning council to develop a statewide, comprehensive "211" information and referral plan for use as a telephone dialing code for access to health and human services. The plan shall include a tariff structure based on existing agreements, a common taxonomy of terms, coordination between public and private systems and standardized statewide training and exploration of a centralized information repository. The task force shall include representation from the department of health; the human services department; the children, youth and families department; the labor department; the state agency on aging; the internet long-term care link program; the governor's committee on concerns of the handicapped; the New Mexico commission for the blind; the commission for deaf and hard-of-

hearing persons; a statewide organization that raises money for health and human service purposes; and other interested parties.

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 422

CHAPTER 324

CHAPTER 324, LAWS 2003

AN ACT

RELATING TO CHILDREN; CREATING A YOUTH COUNCIL WITHIN THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; ENACTING THE YOUTH COUNCIL ACT.

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

Section 1. SHORT TITLE.--This act may be cited as the "Youth Council Act".

Section 2. PURPOSE.--The purpose of the Youth Council Act is to encourage young people throughout New Mexico to consider and discuss the problems they face and to develop possible solutions for presentation to the governor, lieutenant governor and legislature.

Section 3. YOUTH COUNCIL CREATED--ORGANIZATION--FUNCTIONS--DEFINITION.--

A. The "youth council" is created in the children, youth and families department.

B. The council shall consist of at least one youth, aged fourteen to nineteen, from each New Mexico legislative district to be selected by county child welfare advocates and officials, educational advisors, faith-based organizations and community-based youth-serving organizations, in consultation with the legislators from whose district the youth is being selected.

C. The council shall meet at least four times a year for the purpose of discussing the problems faced by New Mexico youth and to recommend possible solutions to these problems to be presented to the governor, lieutenant governor and legislature. Meetings shall not be scheduled to interfere with council participants' school attendance.

D. The council shall issue an annual report that summarizes the activities and findings of the council. The report shall be submitted to the legislature and the executive no later than November 15 of each year.

E. As used in the Youth Council Act, "council" means the youth council.

Section 4. YOUTH COUNCIL COORDINATOR--POSITION CREATED-- -DUTIES.--

A. The position of "youth council coordinator" is created in the office of the secretary of children, youth and families to organize, administer and coordinate youth council activities.

B. The coordinator shall:

(1) select, in consultation with the appropriate legislators, county child welfare advocates and officials, educational advisors, faith-based organizations and community-based youth-serving organizations, a diverse cross section of youths for the council from throughout the state;

(2) organize four council meetings a year, four of which will include the lieutenant governor and two of which will include the governor;

(3) ensure that there is adequate adult supervision for youths participating in council activities;

(4) assist the council in preparing an annual report on its activities and findings; and

(5) act as a liaison between the council and any interagency coordinating group consisting of certain cabinet secretaries if that entity is established by executive order.

SENATE BILL 425, AS AMENDED

CHAPTER 325

CHAPTER 325, LAWS 2003

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING THAT CERTAIN URGENT ECONOMIC DEVELOPMENT PROJECTS MAY BE FUNDED PURSUANT TO THE NEW MEXICO FINANCE AUTHORITY ACT WITHOUT PRIOR LEGISLATIVE AUTHORIZATION.

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

Section 1. Section 6-21-1 NMSA 1978 (being Laws 1992, Chapter 61, Section 1) is amended to read:

"6-21-1. SHORT TITLE.-- Chapter 6, Article 21 NMSA 1978 may be cited as the "New Mexico Finance Authority Act"."

Section 2. Section 6-21-8 NMSA 1978 (being Laws 1992, Chapter 61, Section 8, as amended) is amended to read:

"6-21-8. PUBLIC PROJECT FINANCE PROGRAM--LOANS--PURCHASE OR SALE OF SECURITIES.--To implement a program to assist qualified entities in financing public projects, the authority has the powers specified in this section; provided that the authority shall take no action concerning a project financed with money in the public project revolving fund unless the project is specifically authorized by law or authorized pursuant to other provisions of the New Mexico Finance Authority Act. The authority may:

A. make loans to qualified entities that establish one or more dedicated sources of revenue to repay the loan from the authority;

B. make, enter into and enforce all contracts necessary, convenient or desirable for the purposes of the authority or pertaining to:

(1) a loan to a qualified entity;

(2) a grant to a qualified entity from money available to the authority except money in the public project revolving fund;

(3) a purchase or sale of securities individually or on a pooled basis; or

(4) the performance of its duties and execution of its powers under the New Mexico Finance Authority Act;

C. purchase or hold securities at prices and in a manner the authority considers advisable, giving due consideration to the financial capability of the qualified entity, and sell securities acquired or held by it at prices without relation to cost and in a manner the authority considers advisable;

D. prescribe the form of application or procedure required of a qualified entity for a loan or purchase of its securities, fix the terms and conditions of the loan or purchase and enter into agreements with qualified entities with respect to loans or purchases;

E. charge for its costs and services in review or consideration of a proposed loan to a qualified entity or purchase by the authority of securities, whether or not the loan is made or the securities purchased;

F. fix and establish terms and provisions with respect to:

(1) a purchase of securities by the authority, including date and maturities of the securities;

(2) redemption or payment before maturity; and

(3) any other matters that in connection with the purchase are necessary, desirable or advisable in the judgment of the authority;

G. to the extent permitted under its contracts with the holders of bonds of the authority, consent to modification of the rate of interest, time and payment of installment of principal or interest, security or any other term of a bond, contract or agreement of any kind to which the authority is a party;

H. in connection with the purchase of any securities, consider the ability of the qualified entity to secure financing from other sources and the costs of that financing and the particular public project or purpose to be financed or refinanced with the proceeds of the securities to be purchased by the authority;

I. acquire fee simple, leasehold, mortgagor's or mortgagee's interests in real and personal property and to sell, mortgage, convey or lease that property for authority purposes; and

J. in the event of default by a qualified entity, enforce its rights by suit or mandamus or may use all other available remedies under state law."

Section 3. A new section of the New Mexico Finance Authority Act is enacted to read:

"AUTHORIZATION FOR URGENT ECONOMIC DEVELOPMENT PUBLIC PROJECTS.--

A. The authority may make loans to a qualified entity, pursuant to the provisions of the New Mexico Finance Authority Act, from the public project revolving fund for public projects designated as urgent economic development public projects pursuant to Subsection B of this section without the specific authorization by law otherwise required by Sections 6-21-6 and 6-21-8 NMSA 1978.

B. The authority may designate an urgent economic development public project and provide urgent economic development financing to a qualified entity if the secretary of economic development provides documents to the authority certifying the need for the financing and:

(1) describing a substantial favorable economic impact and benefit to the qualified entity;

(2) demonstrating the urgent nature of the economic development public project because of the likelihood that a new business may choose another location outside of the state or an existing business may be unable to expand in a timely fashion without receipt of the urgent economic development financing;

(3) including evidence from the business detailing the new or expanded business opportunity and describing the jobs to be provided and the urgency of the public project; and

(4) including a resolution adopted by the governing body of the qualified entity approving the project and requesting the urgent economic development financing.

C. After review of the documents submitted by the secretary of economic development, the authority may provide urgent economic development financing to the qualified entity if the authority finds that the timing of the project is so urgent that the economic development benefit to the qualified entity will be lost if the funding decision is delayed until specific authorization of the public project can be obtained from the legislature.

D. Before urgent economic development financing is made available pursuant to this section, the authority shall adopt rules governing the process for reviewing urgent economic development projects and the submission of certification requests. The rules shall be subject to approval of the New Mexico finance authority oversight committee.

E. No urgent economic development project approved pursuant to this section shall receive financing in an amount exceeding two million dollars (\$2,000,000), and the total amount of urgent economic development financing provided by the authority pursuant to the provisions of this section in any fiscal year shall not exceed twenty million dollars (\$20,000,000)."

Section 4. DELAYED REPEAL.--The provisions of Section 3 of this act are repealed effective June 30, 2006.

SENATE JUDICIARY COMMITTEE

SUBSTITUTE FOR SENATE BILL 429

CHAPTER 326

CHAPTER 326, LAWS 2003

AN ACT

RELATING TO SUBDIVISIONS; AMENDING THE NEW MEXICO SUBDIVISION ACT TO PROHIBIT THE MERGER OF CONTIGUOUS PARCELS IN CERTAIN CIRCUMSTANCES.

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

Section 1. A new section of the New Mexico Subdivision Act is enacted to read:

"MERGER OF CONTIGUOUS PARCELS--PROHIBITION.--

A. Contiguous parcels that are owned by a single owner shall not be required by a board of county commissioners to be merged into one parcel if:

(1) each of the contiguous parcels:

(a) is shown on the official plat map of the county; or

(b) was created by a deed or survey recorded with the office of the county clerk;

(2) the chain of title to the contiguous parcels clearly demonstrates that the parcels have been considered separate prior to transfer into common ownership; and

(3) the owner of the contiguous parcels has taken no action to consolidate the parcels.

B. Nothing in this section limits a board of county commissioners, pursuant to notice and public hearing, from requiring consolidation of contiguous parcels in

common ownership for the purpose of enforcing minimum zoning or subdivision standards on the parcels."

SENATE BILL 438, AS AMENDED

CHAPTER 327

CHAPTER 327, LAWS 2003

AN ACT

RELATING TO INSURANCE; ENACTING A NEW SECTION OF THE PATIENT PROTECTION ACT TO PROVIDE FOR THE APPOINTMENT AND COMPENSATION OF QUALIFIED INDIVIDUALS TO REVIEW EXTERNAL GRIEVANCE APPEALS.

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

Section 1. Section 59A-57-1 NMSA 1978 (being Laws 1998, Chapter 107, Section 1) is amended to read:

"59A-57-1. SHORT TITLE.--Chapter 59A, Article 57 NMSA 1978 may be cited as the "Patient Protection Act"."

Section 2. A new section of the Patient Protection Act is enacted to read:

"EXTERNAL GRIEVANCE APPEALS--APPOINTMENT--COMPENSATION.--

A. The superintendent may appoint one or more qualified individuals to review external grievance appeals.

B. The superintendent shall fix the reasonable compensation of each appointee based upon, but not limited to, compensation amounts suggested by national or state legal or medical professional societies, organizations or associations.

C. Upon completion of the external grievance appeal review, the superintendent shall prepare a detailed statement of compensation due each appointee and shall present the statement to the enrollee's health insurer.

D. The enrollee's health insurer shall pay the compensation directly to each appointee who participated in the external grievance appeal review.

E. The superintendent shall promulgate rules to implement this section."

SENATE BILL 508

CHAPTER 328

CHAPTER 328, LAWS 2003

AN ACT

RELATING TO REAL ESTATE APPRAISERS; CLARIFYING THAT REGISTRATION IS FOR STATE APPRENTICE REAL ESTATE APPRAISERS; PROVIDING QUALIFICATIONS FOR ALL LEVELS OF REAL ESTATE APPRAISERS; BROADENING CONTINUING EDUCATION REQUIREMENTS; INCREASING LICENSE AND OTHER FEES; PRESCRIBING PENALTIES; MAKING AN APPROPRIATION.

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

Section 1. Section 61-30-3 NMSA 1978 (being Laws 1990, Chapter 75, Section 3, as amended) is amended to read:

"61-30-3. DEFINITIONS.--As used in the Real Estate Appraisers Act:

A. "appraisal" or "real estate appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in or aspects of identified real estate or real property, for or in expectation of compensation, and shall include the following:

(1) a valuation, analysis, opinion or conclusion prepared by a real estate appraiser that estimates the value of identified real estate or real property; and

(2) an analysis or study of real estate or real property other than estimating value;

B. "appraisal assignment" means an engagement for which an appraiser is employed or retained to act or would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased appraisal;

C. "appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987 and to which reference is made in the federal real estate appraisal reform amendments;

D. "appraisal report" means any communication, written or oral, of an appraisal regardless of title or designation and all other reports communicating an appraisal;

E. "board" means the real estate appraisers board;

F. "certified appraisal" or "certified appraisal report" means an appraisal or appraisal report given or signed and certified as such by a state certified real estate appraiser and shall include an indication of which type of certification is held and shall be deemed to represent to the public that it meets the appraisal standards defined in the Real Estate Appraisers Act;

G. "federal real estate appraisal reform amendments" means the federal Financial Institutions Examination Council Act of 1978, as amended by Title 11, Real Estate Appraisal Reform Amendments;

H. "general certificate" or "general certification" means a certificate or certification for appraisals of all types of real estate issued pursuant to the provisions of the Real Estate Appraisers Act and the federal real estate appraisal reform amendments;

I. "real estate" or "real property" means leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests that by custom, usage or law pass with a conveyance of land, though not described in a contract of sale or instrument of conveyance, and includes parcels with or without upper and lower boundaries and spaces that may be filled with air;

J. "real estate appraiser" means any person who engages in real estate appraisal activity in expectation of compensation;

K. "residential certificate" or "residential certification" means a certificate or certification, limited to appraisals of residential real estate or residential real property without regard to the complexity of the transaction, issued pursuant to the provisions of the Real Estate Appraisers Act and as provided under the terms of the federal real estate appraisal reform amendments;

L. "residential real estate" or "residential real property" means real estate designed and suited or intended for use and occupancy by one to four families, including use and occupancy of manufactured housing;

M. "specialized services" means those services that do not fall within the definition of an appraisal assignment and may include specialized financing or market analyses and feasibility studies that may incorporate estimates of value or analyses, opinions or conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling and real estate tax counseling, provided that the person rendering such services would not be perceived by third

parties or the public as acting as a disinterested third party in rendering an unbiased appraisal or real estate appraisal, regardless of the intention of the client and that person;

N. "state certified appraisal" means any appraisal that is identified as a state certified appraisal report or is in any way described as being prepared by a state certified real estate appraiser;

O. "state certified real estate appraiser" means a person who holds a current, valid general certificate or a current, valid residential certificate issued pursuant to the provisions of the Real Estate Appraisers Act;

P. "state licensed real estate appraiser" means a person who holds a current, valid license issued pursuant to the provisions of the Real Estate Appraisers Act; and

Q. "state apprentice real estate appraiser" means a person who holds a current, valid registration issued pursuant to the provisions of the Real Estate Appraisers Act."

Section 2. Section 61-30-4 NMSA 1978 (being Laws 1990, Chapter 75, Section 4, as amended) is amended to read:

"61-30-4. ADMINISTRATION--ENFORCEMENT.--

A. The board shall administer and enforce the Real Estate Appraisers Act.

B. It is unlawful for a person to engage in the business, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as, a state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser without a license issued by the board. A person who engages in the business or acts in the capacity of a state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser has submitted to the jurisdiction of the state and to the administrative jurisdiction of the board, notwithstanding any other provisions or statutes governing all professional and occupational licenses."

Section 3. Section 61-30-5 NMSA 1978 (being Laws 1990, Chapter 75, Section 5, as amended) is amended to read:

"61-30-5. REAL ESTATE APPRAISERS BOARD CREATED.--

A. There is created a "real estate appraisers board" consisting of seven members.

B. There shall be four real estate appraiser members of the board who shall be licensed or certified. Membership in a professional appraisal organization or association shall not be a prerequisite to serve on the board. No more than two real estate appraiser members shall be from any one licensed or certified category.

C. Board members shall be appointed to five-year terms and shall serve until their successor is appointed and qualified. Real estate appraiser members may be appointed for no more than two consecutive five-year terms.

D. No more than two members shall be from any one county within New Mexico, and at least one real estate appraiser member shall be from each congressional district.

E. One member of the board shall represent lenders or their assignees engaged in the business of lending funds secured by mortgages. Two members shall be appointed to represent the public. The public members shall not have been real estate appraisers or engaged in the business of real estate appraisals or have any financial interest, direct or indirect, in real estate appraisal or any real-estate-related business.

F. Vacancies on the board shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy.

G. The board is administratively attached to the regulation and licensing department."

Section 4. Section 61-30-7 NMSA 1978 (being Laws 1990, Chapter 75, Section 7, as amended) is amended to read:

"61-30-7. BOARD--POWERS--DUTIES.--The board shall:

A. adopt rules necessary to implement the provisions of the Real Estate Appraisers Act;

B. establish educational programs and research projects related to the appraisal of real estate;

C. establish the administrative procedures for processing applications and issuing registrations, licenses and certificates to persons who qualify to be state apprentice real estate appraisers, state licensed real estate appraisers or state certified real estate appraisers;

D. receive, review and approve applications for state apprentice real estate appraisers, state licensed real estate appraisers and each category of state certified real estate appraisers and, for state licensed or state certified real estate appraisers, prepare or supervise the preparation of examination questions and answers

and supervise grading of examinations and enter into contracts with one or more educational testing services or organizations for such examinations;

E. define the extent and type of educational experience, appraisal experience and equivalent experience that will meet the requirements for registration, licensing and certification under the Real Estate Appraisers Act after considering generally recognized appraisal practices and set minimum requirements for education and experience;

F. provide for continuing education programs for the renewal of registrations, licenses and certification that will meet the requirements provided in the Real Estate Appraisers Act and set minimum requirements;

G. adopt standards to define the education programs that will meet the requirements of the Real Estate Appraisers Act and will encourage conducting programs at various locations throughout the state;

H. adopt standards for the development and communication of real estate appraisals provided in the Real Estate Appraisers Act and adopt rules explaining and interpreting the standards after considering generally recognized appraisal practices;

I. adopt a code of professional responsibility for state apprentice real estate appraisers, state licensed real estate appraisers and state certified real estate appraisers;

J. comply with annual reporting requirements and other requirements set forth in the federal real estate appraisal reform amendments;

K. maintain a registry of the names and addresses of the persons who hold current registrations, licenses and certificates issued under the Real Estate Appraisers Act;

L. establish procedures for disciplinary action in accordance with the Uniform Licensing Act against any applicant or holder of a registration, license or certificate for violations of the Real Estate Appraisers Act and any rules adopted pursuant to provisions of that act; and

M. perform such other functions and duties as may be necessary to carry out the provisions of the Real Estate Appraisers Act."

Section 5. Section 61-30-8 NMSA 1978 (being Laws 1990, Chapter 75, Section 8, as amended) is amended to read:

"61-30-8. BOARD--ORGANIZATION--MEETINGS.--

A. The board shall organize by electing a chairperson, vice chairperson and secretary from among its members annually. A majority of the board shall constitute a quorum and may exercise all powers and duties established by the provisions of the Real Estate Appraisers Act.

B. The board shall keep a record of its proceedings, a register of persons registered, licensed or certified as state apprentice real estate appraisers, state licensed real estate appraisers or state certified real estate appraisers, showing the name and places of business of each, and retain all records and applications submitted to the board pursuant to the Real Estate Appraisers Act.

C. The board shall meet not less frequently than once each calendar quarter at such place as may be designated by the board, and special meetings may be held on five days' written notice to each of the members by the chairperson. At least annually, the board shall meet in each of the congressional districts."

Section 6. Section 61-30-9 NMSA 1978 (being Laws 1990, Chapter 75, Section 9, as amended) is amended to read:

"61-30-9. REIMBURSEMENT AND EXPENSES.--The board may appoint such committees of the board as may be necessary. Each member of the board or any committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance. Compensation for employees, investigative contractors or consultants and any necessary supplies and equipment shall be paid from the appraiser fund."

Section 7. Section 61-30-10 NMSA 1978 (being Laws 1990, Chapter 75, Section 10, as amended) is amended to read:

"61-30-10. REGISTRATION, LICENSE OR CERTIFICATION REQUIRED--EXCEPTIONS.--

A. It is unlawful for any person in this state to engage or attempt to engage in the business of developing or communicating real estate appraisals or appraisal reports without first registering as an apprentice or obtaining a license or certificate from the board under the provisions of the Real Estate Appraisers Act.

B. No person, unless certified by the board as a state certified real estate appraiser under a general certification or residential certification, shall:

(1) assume or use any title, designation or abbreviation likely to create the impression of a state certified real estate appraiser;

(2) use the term "state certified" to describe or refer to any appraisal or evaluation of real estate prepared by him;

(3) assume or use any title, designation or abbreviation likely to create the impression of certification as a state certified real estate appraiser firm, partnership, corporation or group; or

(4) assume or use any title, designation or abbreviation likely to create the impression of certification under a general certificate or describe or refer to any appraisal or evaluation of nonresidential real estate by the term "state certified" if the preparer's certification is limited to residential real estate.

C. A state apprentice real estate appraiser who is registered but does not hold a license or certificate is authorized to prepare appraisals of all types of real estate or real property, provided such appraisals are not described or referred to as being prepared by a "state certified real estate appraiser" holding a residential or general certificate or by a "state licensed real estate appraiser" and provided, further, such person does not assume or use any title, designation or abbreviation likely to create the impression of certification as a state certified real estate appraiser or licensure as a state licensed real estate appraiser.

D. A holder of a license or residential certificate is authorized to prepare appraisals of nonresidential real estate, provided such appraisals are not described or referred to as "state certified by a general certified appraiser" and provided, further, the holder of the certificate does not assume or use any title, designation or abbreviation likely to create the impression of general certification.

E. To perform in federally related transactions, as referenced in the federal Financial Institutions Reform, Recovery and Enforcement Act, a real estate appraiser shall, at a minimum, meet the requirements for licensing as currently defined.

F. The requirement of registration, licensing or certification shall not apply to a real estate broker or salesperson who, in the ordinary course of business, gives an opinion of the price or value of real estate for the purpose of securing a listing, marketing of real property, affecting a sale, lease or exchange, conducting market analyses or rendering specialized services; provided, however, this opinion of the price or value shall not be referred to or construed as an appraisal or appraisal report and no compensation, fee or other consideration is expected or charged for such opinion, other than the real estate brokerage commission or fee for services rendered in connection with the identified real estate or real property.

G. The requirement of registration, licensing or certification shall not apply to real estate appraisers of the property tax division of the taxation and revenue department, to a county assessor or to the county assessor's employees, who as part of their duties are required to engage in real estate appraisal activity as a county assessor or on behalf of the county assessor and no additional compensation fee or other consideration is expected or charged for such appraisal activity, other than such compensation as is provided by law.

H. The prohibition of Subsection A of this section does not apply to persons whose real estate appraisal activities are limited to the appraisal of interests in minerals, including oil, natural gas, liquid hydrocarbons or carbon dioxide, and property held or used in connection with mineral property, if that person is authorized in his state of residence to practice and is actually engaged in the practice of the profession of engineering or geology.

I. The process of analyzing, without altering, an appraisal report that is part of a request for mortgage credit is considered a specialized service as defined in Subsection M of Section 61-30-3 NMSA 1978 and is exempt from the requirements of registration, licensing or certification."

Section 8. Section 61-30-10.1 NMSA 1978 (being Laws 1992, Chapter 54, Section 8, as amended) is amended to read:

"61-30-10.1. QUALIFICATION FOR STATE APPRENTICE REAL ESTATE APPRAISERS.--

A. Registration as a state apprentice real estate appraiser shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for registration as a state apprentice real estate appraiser shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for registration as a state apprentice real estate appraiser shall have the education requirements as established for the apprentice classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency."

Section 9. Section 61-30-11 NMSA 1978 (being Laws 1990, Chapter 75, Section 11, as amended) is amended to read:

"61-30-11. QUALIFICATIONS FOR LICENSE.--

A. Licenses shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a license as a state licensed real estate appraiser shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for a license as a state licensed real estate appraiser shall have additional experience and education requirements as established for the licensed classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

E. Persons who do not meet the qualifications for licensure are not qualified for appraisal assignments involving federally related transactions."

Section 10. Section 61-30-12 NMSA 1978 (being Laws 1990, Chapter 75, Section 12, as amended) is amended to read:

"61-30-12. QUALIFICATIONS FOR CERTIFICATE.--

A. Certificates shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a certificate as a state certified real estate appraiser shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for a residential certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and shall have additional experience and education requirements as established for the residential certification classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

D. Each applicant for a general certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and have additional experience and education requirements as established for the general certification classification issued by the appraiser qualifications board of the appraisal foundation and adopted pursuant to the Real Estate Appraisers Act.

E. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency."

Section 11. Section 61-30-13 NMSA 1978 (being Laws 1990, Chapter 75, Section 13, as amended) is amended to read:

"61-30-13. APPLICATION FOR REGISTRATION, LICENSE OR CERTIFICATE--
EXAMINATION.--

A. All applications for registrations, licenses or certificates shall be made to the board in writing, shall specify whether registration or a license or a certificate is being applied for by the applicant and, if a certificate, the classification of the certificate being applied for by the applicant and shall contain such data and information as may be required by the board.

B. Each applicant for a license or a certificate shall demonstrate by successfully passing a written examination, prepared by or under the supervision of the board, that the applicant possesses, consistent with licensure or the certification sought, the following:

(1) an appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing and economic concepts applicable to real estate;

(2) a basic understanding of real estate law;

(3) an adequate knowledge of theory and techniques of real estate appraisal;

(4) an understanding of the principles of land economics, real estate appraisal processes and problems likely to be encountered in the gathering, interpreting and processing of data in carrying out appraisal disciplines;

(5) an understanding of the standards for the development and communication of real estate appraisals as provided in the Real Estate Appraisers Act;

(6) knowledge of theories of depreciation, cost estimating, methods of capitalization and the mathematics of real estate appraisal that are appropriate for the classification of certificate applied for by the applicant;

(7) knowledge of other principles and procedures as may be appropriate for the respective classification; and

(8) an understanding of the types of misconduct for which disciplinary proceedings may be initiated against a state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser as set forth in the Real Estate Appraisers Act.

C. The examination shall be given at least four times each calendar year at such times and places within the state as the board prescribes. The board shall make a reasonable effort to conduct examinations in each congressional district. Notice of passing or failing the examination shall be given by the board to each applicant not later than forty-five days following the date of the examination.

D. An applicant for a license or a certificate who fails to successfully complete the written examination may apply for a reexamination for a license or certificate upon compliance with such conditions as set forth in the rules adopted by the board pursuant to the provisions of the Real Estate Appraisers Act."

Section 12. Section 61-30-14 NMSA 1978 (being Laws 1990, Chapter 75, Section 14, as amended) is amended to read:

"61-30-14. ISSUANCE AND RENEWAL OF REGISTRATION, LICENSES AND CERTIFICATES.--

A. The board shall issue to each qualified applicant evidence of registration, a license or a certificate in a form and size prescribed by the board.

B. The board in its discretion may renew registrations, licenses or certificates for periods of one, two or three years for the purpose of coordinating continuing education requirements with registration, license or certificate renewal requirements.

C. Each registration, license or certificate holder shall submit proof of compliance with continuing education requirements and the renewal fee.

D. At the election of eligible holders of a registration, license or certificate who perform or seek to perform appraisals in federally related transactions under the federal real estate appraisal reform amendments, each application for renewal shall include payment of a registry fee set by the federal financial institutions examination council. The registry fee shall be transmitted by the board to the federal financial institutions examination council. Notice of whether the state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser has paid the federal registry fee and is thus eligible to perform in federally related transactions shall be included on the face of each registration, license and certificate issued by the board.

E. The board shall certify renewal of each registration, license or certificate in the absence of any reason or condition that might warrant the refusal of the renewal of a registration, license or certificate.

F. In the event any registration, license or certificate holder fails to properly apply for renewal of the registration, license or certificate within the thirty days immediately following his registration, license or certificate renewal date of any given year, the registration, license or certificate shall expire thirty days following the renewal date.

G. The board may renew an expired registration upon application, payment of the current annual renewal fee, submission of proof of compliance with continuing education requirements and payment of a reinstatement fee in the amount

not to exceed two hundred dollars (\$200), in addition to any other fee permitted under the Real Estate Appraisers Act.

H. The board may renew an expired license or certificate upon application, payment of the current annual renewal fee, submission of proof of compliance with continuing education requirements and payment of the reinstatement fee, in addition to any other fee permitted under the Real Estate Appraisers Act; provided that the board may, in the board's discretion, treat the former certificate holder as a new applicant and further may require reexamination as a condition to reissuance of a certificate.

I. If during a period of one year from the date a registration, license or certificate expires, the registration, license or certificate holder is either absent from this state on active duty military service or is suffering from an illness or injury of such severity that the person is physically or mentally incapable of renewal of the registration, license or certificate, payment of the reinstatement fee and, in the case of a license or certificate holder, reexamination shall not be required by the board if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the board for renewal. A copy of the person's military orders or a certificate of the applicant's physician shall accompany the application.

J. The board may adopt additional requirements by rule for the issuance or renewal of registrations, licenses or certificates to maintain or upgrade real estate appraiser qualifications at a level no less than the recommendations of the appraiser qualifications board of the appraisal foundation or the requirements of the appraisal subcommittee."

Section 13. Section 61-30-15 NMSA 1978 (being Laws 1990, Chapter 75, Section 15, as amended) is amended to read:

"61-30-15. REFUSAL, SUSPENSION OR REVOCATION OF REGISTRATION, LICENSE OR CERTIFICATE.--

A. The board, consistent with Section 61-30-7 NMSA 1978, shall refuse to issue or renew a registration, license or certificate or shall suspend or revoke a registration, license or certificate at any time when the applicant, state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser, in performing or attempting to perform any of the actions set forth in the Real Estate Appraisers Act, is determined by the board to have:

(1) procured or attempted to procure a registration, license or certificate by knowingly making a false statement or submitting false information or through any form of fraud or misrepresentation;

(2) refused to provide complete information in response to a question in an application for registration, a license or certificate or failed to meet the minimum qualifications established by the Real Estate Appraisers Act;

(3) paid money, other than as provided for in the Real Estate Appraisers Act, to any member or employee of the board to procure registration, a license or a certificate;

(4) been convicted of a crime that is substantially related to the qualifications, functions and duties of the person developing real estate appraisals and communicating real estate appraisals to others;

(5) committed an act involving dishonesty, fraud or misrepresentation or by omission engaged in a dishonest or fraudulent act or misrepresentation with the intent to substantially benefit the registration, license or certificate holder or another person or with the intent to substantially injure another person;

(6) willfully disregarded or violated any of the provisions of the Real Estate Appraisers Act or the rules of the board adopted pursuant to that act;

(7) accepted an appraisal assignment when the employment itself is contingent upon the real estate appraiser reporting a predetermined analysis or opinion or where the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion or valuation reached or upon the consequences resulting from the appraisal assignment; provided that a contingent fee agreement is permitted for the rendering of special services not constituting an appraisal assignment and the acceptance of a contingent fee is clearly and prominently stated on the written appraisal report;

(8) suffered the entry of a final civil judgment on the grounds of fraud, misrepresentation or deceit in the making of an appraisal; provided that the state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser shall be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment; or

(9) committed any other conduct that is related to dealings as a state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser and that constitutes or demonstrates bad faith, untrustworthiness, impropriety, fraud, dishonesty or any unlawful act.

B. The board, consistent with Section 61-30-7 NMSA 1978, shall refuse to issue or renew a registration, license or certificate and shall suspend or revoke a registration, license or certificate at any time when the board determines that the applicant or state apprentice real estate appraiser, state licensed real estate appraiser

or state certified real estate appraiser, in the performance of real estate appraisal work, has:

(1) repeatedly failed to observe one or more of the standards for the development or communication of real estate appraisals set forth in the rules adopted pursuant to the Real Estate Appraisers Act;

(2) repeatedly failed or refused, without good cause, to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

(3) repeatedly been negligent or incompetent in developing an appraisal, in preparing an appraisal report or in communicating an appraisal; or

(4) violated the confidential nature of records to which the state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser gained access through employment or engagement as such an appraiser.

C. The action of the board relating to the issuance, suspension or revocation of any registration, license or certificate shall be governed by the provisions of the Uniform Licensing Act. The board shall participate in any hearings required or conducted by the board pursuant to the provisions of the Uniform Licensing Act.

D. The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted under the Real Estate Appraisers Act.

E. Nothing in the Real Estate Appraisers Act shall be construed to preclude any other remedies otherwise available under common law or statutes of this state."

Section 14. Section 61-30-16 NMSA 1978 (being Laws 1990, Chapter 75, Section 16, as amended) is amended to read:

"61-30-16. STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE--
CERTIFICATE OF GOOD STANDING.--

A. Each state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation and as adopted by rule pursuant to provisions of the Real Estate Appraisers Act.

B. The board, upon payment of a fee in an amount specified in its rules, may issue a certificate of good standing to any real estate appraiser who is in good standing in accordance with the Real Estate Appraisers Act."

Section 15. Section 61-30-17 NMSA 1978 (being Laws 1990, Chapter 75, Section 17, as amended) is amended to read:

"61-30-17. FEES.--The board shall charge and collect the following fees not to exceed:

- A. an application fee for a registration, two hundred dollars (\$200);
- B. an application fee for a license or residential certification, four hundred dollars (\$400);
- C. an application fee for general certification, five hundred dollars (\$500);
- D. an examination fee for general and residential certification or license, two hundred dollars (\$200);
- E. a registration renewal fee, two hundred fifty dollars (\$250);
- F. a certificate renewal fee for residential certification, or license renewal, four hundred fifty dollars (\$450);
- G. a certificate renewal fee for general certification, five hundred dollars (\$500);
- H. the registry fee as required by the federal real estate appraisal reform amendments;
- I. for registration for temporary practice, two hundred dollars (\$200);
- J. for each duplicate registration, license or certificate issued because a registration, license or certificate is lost or destroyed and an affidavit as to its loss or destruction is made and filed, fifty dollars (\$50.00); and
- K. fees to cover reasonable and necessary administrative expenses."

Section 16. Section 61-30-19 NMSA 1978 (being Laws 1990, Chapter 75, Section 19, as amended) is amended to read:

"61-30-19. CONTINUING EDUCATION.--

A. The board shall adopt rules providing for continuing education programs that offer courses in real property appraisal, practices and techniques, including basic real estate law and practice. The rules shall require that every state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser, as a condition to renewal, shall successfully complete the continuing education requirements approved by the board.

B. The rules shall prescribe areas of specialty or expertise relating to registration, licenses and the type of certificate held and may require that a certain part of continuing education be devoted to courses in the area of the state apprentice real estate appraiser's, state licensed real estate appraiser's or state certified real estate appraiser's specialty or expertise. The rules shall also permit state apprentice real estate appraisers, state licensed real estate appraisers or state certified real estate appraisers to meet the continuing education requirements by participation other than as a student in educational processes and programs in real property appraisal theory, practices and techniques by instructing or preparing educational materials."

Section 17. Section 61-30-20 NMSA 1978 (being Laws 1990, Chapter 75, Section 20, as amended) is amended to read:

"61-30-20. NONRESIDENT APPLICANTS--RECIPROCITY.--

A. The board shall issue a registration, license or certificate to a nonresident, provided that state's requirements for registration, licensing or certification are the same or similar to the requirements set forth in the Real Estate Appraisers Act. In the event that the other state's requirements are not similar or cannot be verified, a qualifying nonresident applicant may become a state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser by conforming to all conditions of the Real Estate Appraisers Act. Examinations taken in other states are acceptable in New Mexico at the board's discretion if the exam was at the appropriate level and approved by the appraisal foundation. If it is beneficial to New Mexico state apprentice real estate appraisers, state licensed real estate appraisers or state certified real estate appraisers, the board may negotiate agreements with other states allowing reciprocity. The registration, license or certificate shall be issued upon payment of the application fee, verification that the applicant has complied with his resident state's current education requirements and the filing with the board of a license history and verification of good standing issued by the licensing board of the other state.

B. The applicant shall file an irrevocable consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise from his actions as a state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser or in which the plaintiff may reside, by the service of any processes or pleadings authorized by the laws of this state on the board, the consent stipulating and agreeing that such service of processes or pleadings on the board shall be taken and held in all courts to be as valid and binding as if personal service has been made upon the applicant in New Mexico. In

case any process or pleading mentioned in the case is served upon the board, it shall be by duplicate copies, one of which shall be filed in the office of the board and the other immediately forwarded by registered mail to the nonresident state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser to whom the processes or pleadings are directed."

Section 18. Section 61-30-21 NMSA 1978 (being Laws 1990, Chapter 75, Section 21, as amended) is amended to read:

"61-30-21. TEMPORARY PRACTICE.--

A. The board shall recognize, on a temporary basis, the registration, certification or license of a real estate appraiser issued by another state if:

(1) the real estate appraiser's business is of a temporary nature and certified by the real estate appraiser not to exceed six months; and

(2) the real estate appraiser registers the temporary practice with the board.

B. The applicant or any person registering with the board for temporary practice shall file an irrevocable consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise from his actions as a state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser or in which the plaintiff may reside, by the service of any processes or pleadings authorized by the laws of this state on the board, the consent stipulating and agreeing that such service of processes or pleadings on the board shall be taken and held in all courts to be as valid and binding as if personal service had been made upon the applicant in New Mexico. In case any process or pleading mentioned in the case is served upon the board, it shall be by duplicate copies, one of which shall be filed in the office of the board and the other immediately forwarded by registered mail to the nonresident state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser to whom the processes or pleadings are directed."

Section 19. Section 61-30-22 NMSA 1978 (being Laws 1990, Chapter 75, Section 22, as amended) is amended to read:

"61-30-22. CIVIL AND CRIMINAL PENALTIES--INJUNCTIVE RELIEF.--

A. Any person who violates any provision of the Real Estate Appraisers Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six months or both.

B. In the event any person has engaged in or proposes to engage in any act or practice violating a provision of the Real Estate Appraisers Act, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur shall, upon application of the board, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

C. The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation of the Real Estate Appraisers Act and assess administrative costs for any investigation and administrative or other proceedings against a state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser or against any person who is found, through an administrative proceeding, to have acted without a license. Appeals from decisions of the board shall be taken as provided in Section 39-3-1.1 NMSA 1978."

Section 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 562

CHAPTER 329

CHAPTER 329, LAWS 2003

AN ACT

RELATING TO REAL ESTATE LICENSES; CHANGING A REQUIREMENT FOR LICENSURE AS A QUALIFYING BROKER.

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

Section 1. Section 61-29-9 NMSA 1978 (being Laws 1959, Chapter 226, Section 8, as amended) is amended to read:

"61-29-9. QUALIFICATIONS FOR LICENSE.--

A. Licenses shall be granted only to persons who are deemed by the commission to be of good repute and competent to transact the business of a real estate broker or salesperson in a manner that safeguards the interests of the public.

B. An applicant for a broker's license shall be a legal resident of the United States and have reached the age of majority. Each applicant for a broker's license shall have passed the real estate examination approved by the commission and shall:

(1) have performed actively as a real estate salesperson for at least twenty-four months out of the preceding thirty-six months immediately prior to filing application and furnish the commission a certificate that he has completed successfully a broker basics course approved by the commission;

(2) furnish the commission a certificate that he has completed successfully one hundred eighty classroom hours of instruction in basic real estate courses approved by the commission;

(3) furnish the commission a certificate that he is a duly licensed real estate broker in good standing in another state; providing he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course;

(4) furnish the commission satisfactory proof of his equivalent experience in an activity closely related to or associated with real estate and furnish the commission a certificate that he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course; or

(5) an applicant for a qualifying broker's license shall have been actively engaged in the real estate business as an associate broker or salesperson for at least two years and furnish the commission a certificate that he has completed successfully a broker basics course approved by the commission.

C. Each applicant for a real estate salesperson's license shall be a legal resident of the United States, have reached the age of majority, have passed the real estate examination approved by the commission and furnish the commission a certificate that he has completed successfully sixty classroom hours of instruction in basic real estate courses approved by the commission.

D. The commission shall require the information it deems necessary from every applicant to determine his honesty, trustworthiness and competency. Corporations, partnerships or associations may hold a broker's license issued in the name of the corporation, partnership or association, provided at least one member of the partnership or association or one officer or employee of a corporation who actively engages in the real estate business first secures a broker's license. The license shall be issued in the name of the corporation, partnership or association, naming the partner, associate, officer or employee as qualifying broker for the corporation, partnership or association."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 571, AS AMENDED

CHAPTER 330

CHAPTER 330, LAWS 2003

AN ACT

RELATING TO TAXATION; SETTING JANUARY 1, 2005 AS THE INITIATION DATE OF THE NEXT SERIES OF NONTAXABLE TRANSACTION CERTIFICATES; AMENDING SECTIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT.

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

Section 1. Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section 13, as amended) 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. The department by regulation may deem to be nontaxable transaction certificates documents issued by other states or the multistate tax commission to taxpayers not required to be registered in New Mexico. 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 issued by the department. 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, 2005, every nontaxable transaction certificate, except for nontaxable transaction certificates of the series applicable to the twelve-year period beginning January 1, 2005 and issued by the department prior to that date, is void with respect to transactions after December 31, 2004. The department shall issue separate series of nontaxable transaction certificates for the twelve-year period beginning January 1, 2005 and for each twelve-year period beginning on January 1 of every twelfth year succeeding calendar year 2005. A series of nontaxable transaction certificates issued by the department for any twelve-year period may be executed by buyers or lessees for transactions occurring within or prior to that twelve-year period but is not valid for transactions occurring after that twelve-year period, except the nontaxable transaction certificates issued by the department for the period January 1, 1992 to December 31, 2001 may be executed by buyers or lessees for transactions occurring prior to December 31, 2004. 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 twelve-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, except with respect to documents issued by other states or the multistate tax commission that the department has deemed to be nontaxable transaction certificates. If a person is shown on the department's records to be a delinquent taxpayer or to have a non-filed period, the department may refuse to approve the application of the person until the person has filed returns for all non-filed periods and 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 or to have a non-filed period, the department may refuse to issue nontaxable transaction certificates to the person until the person has filed returns for all non-filed periods and is no longer shown to be a delinquent taxpayer. The taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. The department may require a buyer or lessee requesting and receiving nontaxable transaction certificates for execution by that buyer or lessee to report to the department 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 a seller or lessor engaged in business in New Mexico to report to the department 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 7-9-54 NMSA 1978 (being Laws 1969, Chapter 144, Section 44, as amended) is amended to read:

"7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

A. Receipts from selling tangible personal property to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts. Unless contrary to federal law, the deduction provided by this subsection does not apply to:

(1) receipts from selling metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling construction material; or

(4) that portion of the receipts from performing a "service" that reflects the value of tangible personal property utilized or produced in performance of such service.

B. Receipts from selling tangible personal property for any purpose to an Indian tribe, nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. When a seller, in good faith, deducts receipts for tangible personal property sold to the state or any governmental unit, subdivision, agency, department or

instrumentality thereof, after receiving written assurances from the buyer's representative that the property sold is not construction material, the department shall not assert in a later assessment or audit of the seller that the receipts are not deductible pursuant to Paragraph (3) of Subsection A of this section."

SENATE BILL 586, AS AMENDED

CHAPTER 331

CHAPTER 331, LAWS 2003

AN ACT

RELATING TO PROPERTY TAXATION; PROVIDING TAX CREDITS FOR THE DONATION OF LAND OR INTEREST IN LAND; ENACTING THE LAND CONSERVATION INCENTIVES ACT; PROVIDING FOR ADMINISTRATION.

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

Section 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Land Conservation Incentives Act".

Section 2. PURPOSE.--The purpose of the Land Conservation Incentives Act is to encourage private landowners to be stewards of lands that are important habitat areas or contain significant natural, open space and historic resources by providing private landowners with incentives that encourage the protection of private lands for open space, natural resources, biodiversity conservation, outdoor recreation, farmland and forest land preservation, historic preservation and land conservation purposes.

Section 3. DEFINITIONS.--As used in the Land Conservation Incentives Act:

A. "interest in real property" means a right in real property, including access, improvements, water rights, fee simple interest, easement and land use easement. The interest shall comply with the requirements of the Section 170(h) of the Internal Revenue Code of 1986, partial interest, mineral right, remainder or future interest or other interest or right in real property;

B. "land" means real property, including rights of way, easements, privileges and all other rights or interests of a land or description relating to or connected with real property; and

C. "public or private conservation agency" means a governmental body or a private not-for-profit charitable corporation or trust authorized to do business in New Mexico that is organized and operated for natural resources, land conservation or historic preservation purposes and that has tax-exempt status as a public charity under the federal Internal Revenue Code of 1986, and the power to acquire, hold or maintain land or interests in land.

Section 4. ADMINISTRATION.--

A. The Land Conservation Incentives Act shall be administered by the secretary of energy, minerals and natural resources in consultation with the committee established pursuant to the Natural Lands Protection Act.

B. The secretary of energy, minerals and natural resources may promulgate rules as may be deemed necessary to certify eligible projects for treatment in fulfillment of the purposes of this act. The secretary of taxation and revenue, in consultation with the secretary of energy, minerals and natural resources, shall promulgate rules as may be deemed necessary to administer the tax incentives provided for in the Land Conservation Incentives Act and shall coordinate the preparation of the report to the legislature showing the fiscal impact on the treasury of the credits claimed pursuant to that act.

Section 5. APPLICABILITY AND LIMITATIONS.--

A. The tax credits provided by the Land Conservation Incentives Act apply to transfers of land or interests therein in taxable years beginning on or after January 1, 2004 and all taxable years thereafter.

B. A taxpayer claiming a tax credit pursuant to the Land Conservation Incentives Act may not claim a credit pursuant to a similar law for costs related to the same project.

C. A tax credit that is claimed pursuant to the Land Conservation Incentives Act from the donation of land or an interest in land made by a pass-through tax entity, such as a trust, estate, partnership, limited liability corporation or partnership, limited partnership, S corporation or other fiduciary, shall be used either by an entity in the event it is the taxpayer on behalf of the entity or by the member, manager, partner, shareholder or beneficiary, as the case may be, in proportion to his interest in the entity in the event that income, deductions and tax liability pass through the entity to the member, manager, partner, shareholder or beneficiary. Tax credits may not be claimed by both the entity and the member, manager, partner, shareholder or beneficiary for the same donation.

Section 6. INTERPRETATION.--No part or segment of the Land Conservation Incentives Act shall be interpreted to alter or amend permit requirements, reporting requirements, allocation procedures or other requirements as set forth in any other provision of state law.

Section 7. A new section of the Income Tax act, Section 7-2-18.10 NMSA 1978, is enacted to read:

"7-2-18.10. TAX CREDIT AVAILABLE.--

A. There shall be allowed as a credit against the tax liability imposed by the Income Tax Act, an amount equal to fifty percent of the fair market value of land or interest in land that is conveyed for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation as an unconditional donation in perpetuity by the landowner or taxpayer to a public or private conservation agency eligible to hold the land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made pursuant to this section shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser", as those terms are defined under applicable federal laws and regulations governing charitable contributions.

B. The amount of the credit that may be claimed by a taxpayer shall not exceed one hundred thousand dollars (\$100,000). In addition, in a taxable year the credit used may not exceed the amount of individual income tax otherwise due. A portion of the credit that is unused in a taxable year may be carried over for a maximum of twenty consecutive taxable years following the taxable year in which the credit originated until fully expended. A taxpayer may claim only one tax credit per taxable year.

C. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to the Land Use Easement Act and provided that the less-than-fee interest qualifies as a charitable contribution deduction under Section 170(h) of the Internal Revenue Code. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered as qualified donations pursuant to the Land Conservation Incentives Act.

D. Qualified donations shall be eligible for the tax credit if the donations are made to the state of New Mexico, a political subdivision thereof or a charitable organization described in Section 501(c)(3) of the Internal Revenue Code and that meets the requirements of Section 170(h)(3) of that code.

E. To be eligible for treatment as qualified donations under this section, land or interests in lands must be certified by the secretary of energy, minerals and natural resources as fulfilling the purposes as set forth in Section 2 of the Land Conservation Incentives Act. The use and protection of the lands, or interests therein, for open space, natural area protection, biodiversity habitat conservation, land preservation, agricultural preservation, historic preservation or similar use or purpose of the property shall be assured in perpetuity."

Section 8. A new section of the Corporate Income and Franchise Tax Act, Section 7-2A-8.9 NMSA 1978, is enacted to read:

"7-2A-8.9. TAX CREDIT AVAILABLE.--

A. There shall be allowed as a credit against the tax liability imposed by the Corporate Income and Franchise Tax Act an amount equal to fifty percent of the fair market value of land or interest in land that is conveyed for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation as an unconditional donation in perpetuity by the landowner or taxpayer to a public or private conservation agency eligible to hold the land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made pursuant to this section shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser", as those terms are defined under applicable federal laws and regulations governing charitable contributions.

B. The amount of the credit that may be claimed by a taxpayer shall not exceed one hundred thousand dollars (\$100,000). In addition, in a taxable year the credit used may not exceed the amount of corporate income tax otherwise due. A portion of the credit that is unused in a taxable year may be carried over for a maximum of twenty consecutive taxable years following the taxable year in which the credit originated until fully expended. A taxpayer may claim only one tax credit per taxable year.

C. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to the Land Use Easement Act; provided that the less-than-fee interest qualifies as a charitable contribution deduction under Section 170(h) of the Internal Revenue Code. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered as qualified donations pursuant to the Land Conservation Incentives Act.

D. Qualified donations shall be eligible for the tax credit if the donations are made to the state of New Mexico, a political subdivision thereof or a charitable organization described in Section 501(c)(3) of the Internal Revenue Code and that meets the requirements of Section 170(h)(3) of that code.

E. To be eligible for treatment as qualified donations under this section, land or interests in lands must be certified by the secretary of energy, minerals and natural resources as fulfilling the purposes as set forth in Section 2 of the Land Conservation Incentives Act. The use and protection of the lands, or interests therein, for open space, natural area protection, biodiversity habitat conservation, land preservation, agricultural preservation, historic preservation or similar use or purpose of the property shall be assured in perpetuity."

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2004.

SENATE BILL 581, AS AMENDED

CHAPTER 332

CHAPTER 332, LAWS 2003

AN ACT

RELATING TO MEDICATION AIDES; PROVIDING FOR A TRIAL PROGRAM FOR MEDICATION AIDES TO SERVE PERSONS IN LICENSED NURSING FACILITIES.

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

**Section 1. TEMPORARY PROVISION--MEDICATION AIDES--
NURSING FACILITIES--TRIAL PROGRAM--APPROPRIATION.--**

A. The board of nursing shall conduct a trial program in five regions of the state for the certification of no more than one hundred medication aides and the approval of medication aide training programs to serve persons in licensed nursing facilities. The purpose of the trial program is to determine whether certified medication aides can safely and efficiently administer routine medications in licensed nursing facilities; provided that a medication aide shall not administer schedule I or injectable drugs.

B. Approved training programs shall, through contract or other agreement, provide remuneration to the board of nursing for administrative and other costs associated with oversight of the medication aide program.

C. In order to participate in the trial program, 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 rules pertaining to medication aides as determined by the board of nursing.

D. An advisory committee, appointed by the board of nursing, shall oversee the trial program, advise the board on the implementation of the program and make recommendations to the board of nursing on the board's evaluation of the program. The advisory committee shall be composed of individuals with expertise in long-term care, including at least one representative from the university of New Mexico, the department of health and the New Mexico nurses association.

E. After considering the recommendations of the advisory committee, the board of nursing shall evaluate the trial program and submit a report and recommendations for continuing the program to the second session of the forty-sixth legislature no later than December 15, 2004. A person shall not serve as a medication aide without completing an approved training program through the state of New Mexico.

F. As used in this section, "medication aide" means a person who, under supervision of a licensed registered nurse in licensed nursing facilities, is permitted to administer routine medications according to rules adopted by the board of nursing.

G. Public programs participating in the trial program shall not supplant or replace existing registered nurses with medication aides. A licensed nurse shall be on site to provide supervision of medication aides participating in the trial program.

SENATE BILL 632, AS AMENDED

CHAPTER 333

CHAPTER 333, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING AN EXCEPTION TO WEIGHT AND SIZE LIMITATIONS FOR CERTAIN VEHICLES TRANSPORTING SEED COTTON MODULES.

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

Section 1. A new section of the Motor Vehicle Code, Section 66-7-413.5 NMSA 1978, is enacted to read:

"66-7-413.5. EXEMPTION--VEHICLES USED TO TRANSPORT SEED COTTON MODULES--LIMITATIONS.--

A. A seed cotton module transport vehicle may transport loads without securing a permit or escort if:

(1) the vehicle is:

(a) no wider than nine feet;

(b) no longer than forty-eight feet; and

(c) no higher than fourteen feet six inches;

(2) the load is not transported for a distance greater than one hundred miles;

(3) the gross vehicle weight of the vehicle is less than fifty-nine thousand four hundred pounds;

(4) the vehicle is marked on the front and the rear with "OVERSIZED LOAD" signs; and

(5) the vehicle is not operated on highways for which a more strict size or weight limitation is required by federal law.

B. If the owner of a seed cotton module transport vehicle transports a load of more than fifty-nine thousand four hundred pounds, the owner is liable to the state, county or municipality for damage to a highway, street, road or bridge caused by the weight of the load and transport.

C. If the seed cotton module transport vehicle is not operated on routes identified by the state highway and transportation department as having deficient bridge structures, the owner or operator shall obtain and have in possession the deficient bridge information from the department on an annual basis.

D. As used in this section, "seed cotton module transport vehicle" means a motor vehicle, trailer or combination of motor vehicle with trailer used exclusively to transport a seed cotton module."

SENATE BILL 641, AS AMENDED

CHAPTER 334

CHAPTER 334, LAWS 2003

AN ACT

RELATING TO LICENSING; CLARIFYING THE STATUTE OF LIMITATIONS ON BOARD ACTIONS; PROVIDING SANCTIONS FOR UNLICENSED ACTIVITY BY A

PERSON; AMENDING AND ENACTING SECTIONS OF THE UNIFORM LICENSING ACT.

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

Section 1. Section 61-1-3.1 NMSA 1978 (being Laws 1981, Chapter 349, Section 3, as amended by Laws 1993, Chapter 218, Section 40 and also by Laws 1993, Chapter 295, Section 4) is amended to read:

"61-1-3.1. LIMITATIONS.--

A. An action that would have any of the effects specified in Subsections D through N of Section 61-1-3 NMSA 1978 or an action related to unlicensed activity shall not be initiated by a board later than two years after the discovery by the board of the conduct that would be the basis for the action, except as provided in Subsection C of this section.

B. The time limitation contained in Subsection A of this section shall be tolled by any civil or criminal litigation in which the licensee or applicant is a party arising from substantially the same facts, conduct or transactions that would be the basis for the board's action.

C. The New Mexico state board of psychologist examiners shall not initiate an action that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than five years after the conduct of the psychologist or psychologist associate that is the basis for the action. However, if the conduct that is the basis for the action involves a minor or a person adjudicated incompetent, the action shall be initiated, in the case of a minor, no later than one year after the minor's eighteenth birthday or five years after the conduct, whichever is last and, in the case of a person adjudicated incompetent, one year after the adjudication of incompetence is terminated or five years after the conduct, whichever is last.

D. The New Mexico public accountancy board shall not initiate an action under the 1999 Public Accountancy Act that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than two years following the discovery by the board of a violation of that act."

Section 2. Section 61-1-4 NMSA 1978 (being Laws 1957, Chapter 247, Section 4, as amended) is amended to read:

"61-1-4. NOTICE OF CONTEMPLATED BOARD ACTION--REQUEST FOR HEARING--NOTICE OF HEARING.--

A. For the purpose of investigating complaints against licensees, the board may issue investigative subpoenas prior to the issuance of a notice of contemplated action as provided in this section.

B. When a board contemplates taking any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, it shall serve upon the applicant a written notice containing a statement:

(1) that the applicant has failed to satisfy the board of his qualifications to be examined or to be issued a license, as the case may be;

(2) indicating in what respects the applicant has failed to satisfy the board;

(3) that the applicant may secure a hearing before the board by depositing in the mail within twenty days after service of the notice a certified return receipt requested letter addressed to the board and containing a request for a hearing; and

(4) calling the applicant's attention to his rights under Section 61-1-8 NMSA 1978.

C. In any board proceeding to take any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, the burden of satisfying the board of the applicant's qualifications shall be upon the applicant.

D. When a board contemplates taking any action of a type specified in Subsections D through N of Section 61-1-3 NMSA 1978, it shall serve upon the licensee a written notice containing a statement:

(1) that the board has sufficient evidence that, if not rebutted or explained, will justify the board in taking the contemplated action;

(2) indicating the general nature of the evidence;

(3) that unless the licensee within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the board and containing a request for a hearing, the board will take the contemplated action; and

(4) calling the licensee's attention to his rights as provided in Section 61-1-8 NMSA 1978.

E. If the licensee or applicant does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action

contemplated in the notice and such action shall be final and not subject to judicial review.

F. If the licensee or applicant does mail a request for a hearing as required by this section, the board shall, within twenty days of receipt of the request, notify the licensee or applicant of the time and place of hearing, the name of the person who shall conduct the hearing for the board and the statutes and regulations authorizing the board to take the contemplated action. The hearing shall be held not more than sixty nor less than fifteen days from the date of service of the notice of hearing.

G. Licensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees or if they prevail at the hearing and an action specified in Section 61-1-3 NMSA 1978 is not taken by the board."

Section 3. A new section of the Uniform Licensing Act is enacted to read:

"UNLICENSED ACTIVITY--DISCIPLINARY PROCEEDINGS--CIVIL PENALTY.--

A. A person who is not licensed to engage in a profession or occupation regulated by a board is subject to disciplinary proceedings by the board.

B. A board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in a profession or occupation regulated by the board. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 665, AS AMENDED

CHAPTER 335

CHAPTER 335, LAWS 2003

AN ACT

RELATING TO PUBLIC HEALTH; CREATING THE WATER RECREATION FACILITIES FUND; PRESCRIBING FEES.

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

Section 1. A new section of the Environmental Improvement Act is enacted to read:

"WATER RECREATION FACILITIES FUND--CREATED--FEE IMPOSITION--PURPOSE.--

A. The "water recreation facilities fund" is created in the state treasury to be used to administer and enforce rules pertaining to public swimming pools, public spas and other public water recreation facilities. All fees collected pursuant to Subsection B of this section shall be deposited in the fund. Money in the fund shall not be transferred to any other fund. Disbursements from the fund shall be drawn on warrant of the secretary of finance and administration upon vouchers signed by the secretary of environment or his authorized representative.

B. The environmental improvement board may assess an annual fee not to exceed one hundred fifty dollars (\$150) on the owner or operator of a public swimming pool, public spa or other public water recreation facility to defray the cost of administering and enforcing rules adopted in accordance with the Environmental Improvement Act pertaining to public water recreation facilities. The fee shall be based on the size of the public water recreation facility."

SENATE BILL 704, AS AMENDED

CHAPTER 336

CHAPTER 336, LAWS 2003

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR TRANSITION COST RECOVERY; PERMITTING INVESTMENT IN OR CONSTRUCTION, ACQUISITION OR OPERATION OF CERTAIN GENERATING PLANTS; PERMITTING COMBINED GAS AND ELECTRIC DISTRIBUTION UTILITIES TO FUNCTION WITHOUT SEPARATION; SETTING BILLING REQUIREMENTS; PROVIDING APPLICATION AND APPROVAL PROCEDURES FOR DISTRIBUTION COOPERATIVE UTILITIES; ELIMINATING THE PUBLIC UTILITY ACT FROM A DELAYED REPEAL; REPEALING THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999.

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

Section 1. A new section of the Public Utility Act is enacted to read:

"TRANSITION COST RECOVERY.--

A. Notwithstanding repeal of the Electric Utility Industry Restructuring Act of 1999, unless otherwise waived, a public utility shall be entitled to an opportunity to recover its transition costs. Utilities may retain these transition costs as a regulatory asset on their books pending recovery, which shall be completed by January 1, 2010.

B. For purposes of this section, "transition costs" means the prudent, reasonable and unmitigable costs other than stranded costs, not recoverable elsewhere under either federally approved rates or rates approved by the commission, that a public utility would not have incurred but for its compliance with the requirements of the Electric Utility Industry Restructuring Act of 1999 and rules promulgated pursuant to that act relating to the transition to open access, and the prudent cost of severance, early and enhanced retirement benefits, retraining, placement services, unemployment benefits and health care coverage to public utility nonmanagerial employees who are laid off on or before January 1, 2003, that are not otherwise recovered as a stranded salary and benefits cost. Transition costs shall not include costs that the public utility would have incurred notwithstanding the Electric Utility Industry Restructuring Act of 1999."

Section 2. A new section of the Public Utility Act is enacted to read:

"PUBLIC UTILITIES--GENERATING PLANT INVESTMENT, CONSTRUCTION, ACQUISITION AND OPERATION.--

A. A public utility may invest in, construct, acquire or operate a generating plant that is not intended to provide retail electric service to New Mexico customers, the cost of which is not included in retail rates and which business activities shall not be subject to regulation by the commission pursuant to the Public Utility Act, except as provided by Section 62-9-3 NMSA 1978. This section shall not diminish a public utility's obligation, by the prudent acquisition of resources, to serve its retail load at a cost of service no higher than the average book cost plus fuel, other operating and maintenance costs and the utility's authorized rate of return on investment of the utility's unregulated generation constructed or acquired after January 1, 2001; provided that this provision does not apply to a public utility that does not acquire unregulated generation after January 1, 2001. The commission shall assure that the regulated business is appropriately credited for any off-system sales made from regulated assets.

B. This section shall apply only to a public utility that began investing in, constructing or acquiring generating plant pursuant to this section before July 1, 2004. This section shall continue to apply until the latest of:

(1) January 1, 2015;

(2) the date the public utility divests its interest in generating plant acquired or constructed pursuant to the provisions of this section; or

(3) the date the plant receives a certificate of convenience and necessity in accordance with Section 62-9-1 NMSA 1978."

Section 3. A new section of the Public Utility Act is enacted to read:

"GAS AND ELECTRIC UTILITIES--COMBINED SERVICE.--A public utility that provides both electricity and natural gas distribution services shall not be required to functionally separate its electric and gas transmission, transportation and distribution operations from each other. Any rule or order to the contrary is void. Nothing in this section shall prevent a combined gas and electric distribution company from selling the natural gas commodity to customers pursuant to tariffs approved by the commission."

Section 4. A new section of the Public Utility Act is enacted to read:

"BILLING--FRANCHISE FEES--GROSS RECEIPTS TAXES.--

A. A franchise fee charge shall be stated as a separate line entry on a bill sent by a public utility or a distribution cooperative utility to a customer and shall only be recovered from a customer located within the jurisdiction of the government authority imposing the franchise fee.

B. Any gross receipts taxes collected on electric services received by a retail customer in the state shall be stated as a separate line entry on a bill for electric service sent to the customer by a public utility or distribution cooperative utility."

Section 5. A new section of the Rural Electric Cooperative Act is enacted to read:

"DISTRIBUTION COOPERATIVE UTILITIES ORGANIZED IN OTHER STATES--APPLICATION.--A distribution cooperative utility organized pursuant to the laws of another state and providing bundled services in this state on April 1, 1999 to not more than twenty percent of its total customers may file an application with the commission seeking approval of its election to be governed by the laws related to electric restructuring of the state where the utility was organized. The commission shall approve the application if the distribution cooperative utility:

A. does not provide supply service to other than its service customers in this state; and

B. remains subject to the jurisdiction and authority of the commission for bundled service provided in this state."

Section 6. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when used in the Public Utility Act:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances where a person is an officer, director, partner, trustee or person of similar status or function or owns directly or indirectly or has a beneficial interest in ten percent or more of any class of securities of a person;

B. "commission" means the public regulation commission;

C. "commissioner" means a member of the commission;

D. "municipality" means a municipal corporation organized under the laws of the state, and H-class counties;

E. "person" means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, corporation or lessee, trustee or receiver appointed by any court. "Person" does not mean a class A county as described in Section 4-36-10 NMSA 1978 or a class B county as described in Section 4-36-8 NMSA 1978. "Person" does not mean a municipality as defined in this section unless the municipality has elected to come within the terms of the Public Utility Act as provided in Section 62-6-5 NMSA 1978. In the absence of voluntary election by a municipality to come within the provisions of the Public Utility Act, the municipality shall be expressly excluded from the operation of that act and from the operation of all its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or other evidences of indebtedness issued, executed or assumed by a utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own, operate, lease or control:

(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas for light, heat or power or other uses; but the term "public utility" or "utility" shall not include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than

consumers who receive their supply through any pipeline system operating under municipal authority or franchise and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses; or

(5) any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses; provided that the terms "public utility" or "utility" as used in the Public Utility Act do not include any utility owned or operated by a class A county as described in Section 4-36-10 NMSA 1978 either directly or through a corporation owned by or under contract with such a county;

H. "rate" means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by a utility and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "renewable energy" means electrical energy generated by means of a low- or zero-emission generation technology that has substantial long-term production potential and may include, without limitation, solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled. "Renewable energy" does not include fossil fuel or nuclear energy;

J. "service" or "service regulation" means every rule, regulation, practice, act or requirement relating to the service or facility of a utility;

K. "Class I transaction" means the sale, lease or provision of real property, water rights or other goods or services by an affiliated interest to a public utility with which it is affiliated or by a public utility to its affiliated interest;

L. "Class II transaction" means:

(1) the formation after May 19, 1982 of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting securities or other direct ownership interests of a person by a public utility if such acquisition would make the

utility the owner of ten percent or more of the voting securities or other direct ownership interests of that person;

(3) the agreement by a public utility to purchase securities or other ownership interest of a person other than a nonprofit corporation, contribute additional equity to, acquire additional equity interest in or pay or guarantee any bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any such person; provided, however, that a public utility may honor all agreements entered into by such utility prior to May 19, 1982; or

(4) the divestiture by a public utility of any affiliated interest that is a corporate subsidiary of the public utility;

M. "corporate subsidiary" means any person ten percent or more of whose voting securities or other ownership interests are directly owned by a public utility; and

N. "public utility holding company" means an affiliated interest that controls a public utility through the direct or indirect ownership of voting securities of that public utility."

Section 7. Section 62-15-32 NMSA 1978 (being Laws 1939, Chapter 47, Section 32, as amended) is amended to read:

"62-15-32. CONSTRUCTION OF ACT--INCONSISTENCY.--The Rural Electric Cooperative Act shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things. Nothing contained in the Rural Electric Cooperative Act shall be construed, however, to conflict with any duty to which a cooperative is subject or with any benefit to which a cooperative is entitled under the Public Utility Act. In the event any provision of the Rural Electric Cooperative Act is held to be repugnant to any provision of the Public Utility Act or to a cooperative's inclusion as a public utility thereunder, the latter shall be controlling and the former shall be held repealed to the extent of the repugnancy. Nothing in the Public Utility Act shall be deemed to authorize interference with, abrogation or change of the rights or obligations of a party under a wholesale power supply agreement, mortgage or financing agreement to which a distribution cooperative utility is a party."

Section 8. Laws 1998, Chapter 108, Section 82, as amended, is amended to read:

"Section 82. DELAYED REPEAL.--The following are repealed effective July 1, 2003:

A. Chapter 63, Article 7 NMSA 1978;

- B. the Telephone and Telegraph Company Certification Act;
- C. the New Mexico Telecommunications Act; and
- D. the Cellular Telephone Services Act."

Section 9. REPEAL.--Sections 62-3A-1 through 62-3A-23 NMSA 1978 (being Laws 1999, Chapter 294, Sections 1 through 8, Laws 2000, Chapter 88, Section 1 and Laws 1999, Chapter 294, Sections 9 through 23, as amended) are repealed.

SENATE BILL 718

CHAPTER 337

CHAPTER 337, LAWS 2003

AN ACT

RELATING TO INSURANCE; PROVIDING COVERAGE FOR SMOKING CESSATION TREATMENT.

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

Section 1. A new section of the New Mexico Insurance Code, Section 59A-22-44 NMSA 1978, is enacted to read:

"59A-22-44. COVERAGE FOR SMOKING CESSATION TREATMENT.--

A. An individual or group health insurance policy, health care plan or certificate of health insurance that is delivered or issued for delivery in this state and that offers maternity benefits shall offer coverage for smoking cessation treatment.

B. Coverage for smoking cessation treatment may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same policy, plan or certificate.

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

Section 2. Section 59A-23-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 463, as amended by Laws 1997, Chapter 7, Section 2

and by Laws 1997, Chapter 249, Section 2 and by Laws 1997, Chapter 250, Section 2 and also by Laws 1997, Chapter 255, Section 2) is amended to read:

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

A. A blanket or group health insurance policy or contract shall not contain a 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-22-34.3 NMSA 1978;

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

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

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

(8) Section 59A-22-39.1 NMSA 1978;

(9) Section 59A-22-40 NMSA 1978;

(10) Section 59A-22-41 NMSA 1978;

(11) Section 59A-22-42 NMSA 1978; and

(12) Section 59A-22-44 NMSA 1978."

Section 3. Section 59A-23B-3 NMSA 1978 (being Laws 1991, Chapter 111, Section 3, as amended by Laws 1997, Chapter 249, Section 3 and also by Laws 1997, Chapter 250, Section 3) 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 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;

(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; and

(i) coverage for smoking cessation treatment.

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 such written agreement shall contain a provision relieving the individual, family or group covered by the policy or plan from an obligation to pay for a 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 a 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 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. A 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 not maintain an action against an insured person, family or group member for sums owed by an insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan that are higher than those agreed to pursuant to a policy or plan."

Section 4. A new section of the Health Maintenance Organization Law is enacted to read:

"COVERAGE FOR SMOKING CESSATION TREATMENT.--

A. An individual or group health maintenance organization contract that is delivered or issued for delivery in this state and that offers maternity benefits shall offer coverage for smoking cessation treatment.

B. Coverage for smoking cessation treatment may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same contract."

Section 5. Section 59A-47-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.32, as amended) 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. The Policy Language Simplification Law;
- M. Subsections B through E of Section 59A-22-5 NMSA 1978;
- N. Section 59A-22-14 NMSA 1978;
- O. Section 59A-22-34.1 NMSA 1978;
- P. Section 59A-22-39 NMSA 1978;
- Q. Section 59A-22-40 NMSA 1978;
- R. Section 59A-22-41 NMSA 1978;
- S. Section 59A-22-42 NMSA 1978;
- T. Section 59A-22-44 NMSA 1978;
- U. Sections 59A-34-7 through 59A-34-13, 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-40 through 59A-34-42 and 59A-34-44 through 59A-34-46 NMSA 1978;
- V. The Insurance Holding Company Law, except Section 59A-37-7 NMSA 1978;
- W. Section 59A-46-15 NMSA 1978; and

X. the Patient Protection Act."

Section 6. SUPERINTENDENT OF INSURANCE--ADDITIONAL POWERS.--The superintendent of insurance shall promulgate rules to define minimum coverage for smoking cessation treatment.

Section 7. APPLICABILITY.--The provisions of this act apply to policies, plans, contracts and certificates delivered or issued for delivery or renewed, extended or amended pursuant to the New Mexico Insurance Code in this state on or after July 1, 2003.

SENATE BILL 743, AS AMENDED

CHAPTER 338

CHAPTER 338, LAWS 2003

AN ACT

RELATING TO AGENCIES; CLARIFYING THE DUTIES OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 9-2A-2 NMSA 1978 (being Laws 1992, Chapter 57, Section 2) is amended to read:

"9-2A-2. PURPOSE.--The purpose of the Children, Youth and Families Department Act is to establish a department of state government that shall:

A. administer all laws and exercise all functions formerly administered and exercised by the youth authority, as well as administering certain functions related to children, youth and families that were formerly administered by other departments or agencies of the state;

B. assist in the development of state policies and plans for services to children, youth and families, including policies and plans that endeavor to strengthen client self-sufficiency and that emphasize prevention without jeopardizing the necessary provision of essential treatment and early intervention services;

C. advocate for services for children, youth and families as an enduring priority in New Mexico; and

D. provide leadership to other agencies that serve children, youth and families to ensure a coordinated and integrated system of care and services for children, youth and families."

Section 2. Section 9-2A-4 NMSA 1978 (being Laws 1992, Chapter 57, Section 4) is amended to read:

"9-2A-4. DEPARTMENT CREATED--DIVISIONS.--

A. The "children, youth and families department" is created. The department is a cabinet department and consists of, but is not limited to, five divisions as follows:

- (1) the protective services division;
- (2) the juvenile justice division;
- (3) the prevention and intervention division;
- (4) the financial services division; and
- (5) the employee support division.

B. The secretary is empowered to organize the department and the divisions specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy.

C. The governor is empowered to merge divisions and to abolish or create divisions of the department by executive order in the interest of efficiency and economy."

Section 3. Section 9-2A-8 NMSA 1978 (being Laws 1992, Chapter 57, Section 8, as amended) is amended to read:

"9-2A-8. DEPARTMENT--ADDITIONAL DUTIES.--In addition to other duties provided by law or assigned to the department by the governor, the department shall:

A. develop priorities for department services and resources based on state policy and national best-practice standards and local considerations and priorities;

B. strengthen collaboration and coordination in state and local services for children, youth and families by integrating critical functions as appropriate, including service delivery and contracting for services across divisions and related agencies;

C. develop and maintain a statewide database, including client tracking of services for children, youth and families;

D. develop standards of service within the department that focus on prevention, monitoring and outcomes;

E. analyze policies of other departments that affect children, youth and families to encourage common contracting procedures, common service definitions and a uniform system of access;

F. enact regulations to control disposition and placement of children under the Children's Code, including regulations to limit or prohibit the out-of-state placement of children, including those who have developmental disabilities or emotional, neurobiological or behavioral disorders, when in-state alternatives are available;

G. develop reimbursement criteria for licensed child care centers and licensed home providers establishing that accreditation by a department-approved national accrediting body is sufficient qualification for the child care center or home provider to receive the highest reimbursement rate paid by the department;

H. assume and implement the lead responsibility among all departments for children's mental health and substance abuse treatment authority in the state, coordinating with the human services department and the department of health;

I. assume and implement the lead responsibility among all departments for domestic violence services;

J. implement prevention and early intervention as a departmental focus;
and

K. conduct biennial assessments of service gaps and needs and establish outcome measurements to address those service gaps and needs, including recommendations from the governor's children's cabinet and the children, youth and families advisory committee."

Section 4. Section 9-2A-12 NMSA 1978 (being Laws 1992, Chapter 57, Section 12) is amended to read:

"9-2A-12. CHILDREN, YOUTH AND FAMILIES ADVISORY COMMITTEE
CREATED--MEMBERS--PURPOSE.--

A. The "children, youth and families advisory committee" is created. The committee shall be composed of eleven members appointed by the governor. The governor shall appoint persons with demonstrated interest and involvement in children, youth and family services, particularly those services and programs administered or funded by the department. Members shall be appointed so as to provide adequate

representation of ethnic groups and geographic areas of the state. At least two members shall be parents who are recipients of services provided by the department, at least two members shall be youths between the ages of sixteen and twenty-one and at least one member shall be on the governor's youth council.

B. The committee shall assist in the development of policies and procedures for the department.

C. The members of the children, youth and families advisory committee shall be reimbursed for their services as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 5. Section 9-2A-13 NMSA 1978 (being Laws 1992, Chapter 57, Section 13) is amended to read:

"9-2A-13. INTERAGENCY COORDINATING GROUP.--There is created an "interagency coordinating group" consisting of the secretary of finance and administration, the secretary of health, the secretary of human services, the secretary of labor, the superintendent of public instruction, the chairman of the joint interim legislative health and human services committee and a member of the governor's office. The group shall assist the secretary of children, youth and families and the children, youth and families advisory committee in planning coordination of services. If the governor creates a children's cabinet through executive order, the children's cabinet shall assume the functions and duties of the interagency coordinating group."

SENATE BILL 752, AS AMENDED

CHAPTER 339

CHAPTER 339, LAWS 2003

AN ACT

RELATING TO PUBLIC SAFETY; REQUIRING STATE AND LOCAL 911 SYSTEMS TO BE ABLE TO RECEIVE EMERGENCY NOTICES BY EMAIL.

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

Section 1. A new section of the Enhanced 911 Act is enacted to read:

"EMAIL NOTIFICATION.--State and local 911 systems shall be able to receive emergency notifications by email."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 753

CHAPTER 340

CHAPTER 340, LAWS 2003

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING FOR THE DISPOSITION OF UNCLAIMED PERSONAL PROPERTY THAT COMES INTO THE POSSESSION OF A PEACE OFFICER; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 29-1-14 NMSA 1978 (being Laws 1983, Chapter 50, Section 2, as amended) is amended to read:

"29-1-14. UNCLAIMED PROPERTY--AUTHORITY TO SELL--NOTICE OF SALE--DEADLY WEAPONS, CONTROLLED SUBSTANCES AND OTHER CONTRABAND EXCEPTED.--

A. Any personal property having a fair market value greater than fifty dollars (\$50.00) that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose and has been in the possession of a state, county or municipal law enforcement agency for more than ninety days shall be sold at public sale.

B. Prior to the sale of seized personal property, the law enforcement agency shall make a reasonable attempt to notify the original owner of the seized personal property and shall publish a notice of the sale of unclaimed personal property once each week for two successive weeks. The notice shall contain:

- (1) a brief description of the personal property to be sold;
- (2) the time and place of the sale; and
- (3) the name of any purported owner, if known.

C. If prior to the sale the true owner identifies the personal property to be sold and offers strict proof of identity and ownership of the personal property, the personal property shall be returned to its true owner.

D. Any personal property offered but not sold at a public sale may be destroyed or otherwise disposed of upon application to the district court, ex parte and without notice.

E. Any personal property sold at public sale, claimed by its true owner, destroyed or otherwise disposed of pursuant to this section shall be removed from the inventory record kept by the law enforcement agency.

F. Any personal property having a fair market value equal to or less than fifty dollars (\$50.00) that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose and has been in the possession of a state, county or municipal law enforcement agency for more than ninety days may be destroyed, except as otherwise provided by order of the district court upon ex parte application without notice.

G. Any alcoholic beverage that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose and has been in the possession of a state, county or municipal law enforcement agency for more than ninety days may be destroyed or may be utilized by the scientific laboratory division of the department of health for educational or scientific purposes.

H. This section shall not apply to deadly weapons or items of significant historical value, poisons, controlled substances or other contraband lawfully seized as evidence for the prosecution of a violation of statute or ordinance or which has otherwise come into the lawful possession of a state, county or municipal law enforcement agency and has been in possession for more than ninety days. Once it is determined by the law enforcement agency that any property enumerated in this subsection is no longer necessary for use in obtaining a conviction or is not needed for any other public purpose, the law enforcement agency may apply to the district court, ex parte and without notice, for an order authorizing destruction or other disposition of the property; provided that a state, county or municipal law enforcement agency shall allow state museums access to agency inventory records for the purpose of inspecting and selecting firearms that are appropriate to state museum firearm collections. The court shall grant the application if the proposed destruction or disposition is in the best interest of the public safety and welfare.

I. This section shall not apply to any personal property for which a notice of intent to claim has been served. Any victim, as defined in Section 31-26-3 NMSA 1978, or alleged victim shall be entitled to serve notice of intent to claim ownership of any personal property upon that person, agency or entity in actual custody or control of

the property. Nothing in this subsection shall be construed to limit, interfere with or affect the rights or remedies of the rightful owner of any seized property."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 768, AS AMENDED

CHAPTER 341

CHAPTER 341, LAWS 2003

AN ACT

RELATING TO TAXATION; INCREASING THE RATE OF THE CIGARETTE TAX; MODIFYING DISTRIBUTIONS OF CIGARETTE TAX REVENUE; AUTHORIZING THE ISSUANCE OF REVENUE BONDS; CREATING THE CREDIT ENHANCEMENT ACCOUNT TO FACILITATE THE ISSUANCE OF REVENUE BONDS; MAKING APPROPRIATIONS.

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

Section 1. Section 7-1-6.11 NMSA 1978 (being Laws 1983, Chapter 211, Section 16, as amended) is amended to read:

"7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipality recreational fund in an amount equal to one and thirty-six hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipal cigarette tax fund in an amount equal to two and seventy-two hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cancer research and treatment center at the university of New Mexico health sciences center in an amount equal to one and thirty-six hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the New Mexico finance authority in an amount equal to two and four-hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

E. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to fourteen and fifty-two hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax, shall be made, on behalf of and for the benefit of the university of New Mexico health sciences center, to the New Mexico finance authority.

F. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to six and eleven-hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for improvements to department of health facilities.

G. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to fifteen and ninety-five hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for deposit in the credit enhancement account created in the authority."

Section 2. Section 7-12-3 NMSA 1978 (being Laws 1971, Chapter 77, Section 3, as amended) is amended to read:

"7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at the rate of four and fifty-five hundredths cents (\$.0455) for each cigarette sold, given or consumed in this state.

B. The tax imposed by this section shall be referred to as the "cigarette tax"."

Section 3. 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 for a term not exceeding fifteen years in an amount not exceeding sixty million dollars (\$60,000,000) for the purpose of designing, constructing, equipping and furnishing additions and improvements to the university of New Mexico hospital and the cancer research and treatment center at the university of New Mexico health sciences center.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the vice president for health sciences of the university

of New Mexico certifies the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the health sciences center of the university of New Mexico for the purposes described in Subsection A of this section.

C. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection E of Section 7-1-6.11 NMSA 1978 shall be pledged irrevocably for the payment of the principal, interest, premiums and related expenses on the bonds and for payment of the expenses incurred by the authority related to the issuance, sale and administration of the bonds.

D. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection E of Section 7-1-6.11 NMSA 1978 shall be deposited each month in a separate fund or account of the authority. Money in the separate fund or account in excess of the monthly amount necessary for immediate payment or designation for payment of principal and interest due on the bonds is appropriated to the university of New Mexico health sciences center and shall be transferred each month to the university of New Mexico health sciences center.

E. Upon payment of all principal, interest and other expenses or obligations related to the bonds, the New Mexico finance authority shall certify to the secretary of taxation and revenue that all obligations for the bonds issued pursuant to this section have been fully discharged and shall direct the secretary of taxation and revenue and the state treasurer to cease distributing cigarette tax proceeds to the authority pursuant to Subsection E of Section 7-1-6.11 NMSA 1978 and to distribute those cigarette tax proceeds to the general fund.

F. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax 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 those cigarette tax revenues, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

G. The New Mexico finance authority may additionally secure the revenue bonds issued pursuant to this section by a pledge of money in the public project revolving fund with a lien priority on the money in the public project revolving fund as determined by the authority.

Section 4. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS-- DEPARTMENT OF HEALTH FACILITIES--APPROPRIATION.--

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act for projects authorized specifically by law for improvements to department of health facilities.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the secretary of finance and administration certifies the

need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the capital program fund administered by the property control division of the general services department for the purposes described in Subsection A of this section.

C. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection F of Section 7-1-6.11 NMSA 1978 shall be pledged irrevocably for the payment of the principal, interest, premiums and related expenses on the bonds and for payment of the expenses incurred by the New Mexico finance authority related to the issuance, sale and administration of the bonds.

D. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection F of Section 7-1-6.11 NMSA 1978 shall be deposited each month in a separate fund or account of the authority. Money in the separate fund or account in excess of the combined total of the principal, interest and other expenses or obligations related to the bonds coming due in that fiscal year is appropriated to and shall be transferred to the capital program fund for capital improvements to department of health facilities recommended by the secretary of health and approved by the secretary of finance and administration.

E. Upon payment of all principal, interest and other expenses or obligations related to the bonds, the New Mexico finance authority shall certify to the secretary of taxation and revenue that all obligations for the bonds issued pursuant to this section have been fully discharged and shall direct the secretary of taxation and revenue and the state treasurer to cease distributing cigarette tax proceeds to the authority pursuant to Subsection F of Section 7-1-6.11 NMSA 1978 and to distribute those cigarette tax proceeds to the general fund.

F. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax 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 those cigarette tax revenues, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

G. The New Mexico finance authority may additionally secure the revenue bonds issued pursuant to this section by a pledge of money in the public project revolving fund with a lien priority on the money in the public project revolving fund as determined by the authority.

Section 5. A new section of the New Mexico Finance Authority Act is enacted to read:

"CREDIT ENHANCEMENT ACCOUNT CREATED--USE OF ACCOUNT--
RELEASE OF MONEY TO THE GENERAL FUND.--

A. The credit enhancement account is created as a separate account within the authority for use only as provided in this section.

B. All cigarette tax proceeds distributed each month to the authority pursuant to Subsection G of Section 7-1-6.11 NMSA 1978 shall be deposited in the credit enhancement account.

C. Amounts deposited in the credit enhancement account may be pledged irrevocably as additional security for the payment of the principal, interest, premiums and expenses on bonds issued by the authority for:

(1) designing, constructing, equipping and furnishing additions and improvements to the university of New Mexico hospital and the cancer research and treatment center at the university of New Mexico health sciences center; and

(2) improvements to department of health facilities.

D. The authority shall determine monthly upon receipt of cigarette tax proceeds if the individual amounts of cigarette tax proceeds distributed pursuant to Subsection E or Subsection F, respectively, of Section 7-1-6.11 NMSA 1978 are sufficient to meet the monthly amount required for immediate payment or designation for payment of principal, interest, premiums and expenses on bonds additionally secured by the credit enhancement account. Any insufficient amount shall be paid immediately from the credit enhancement account. A payment from the credit enhancement account shall be reimbursed in succeeding months from the individual amount of cigarette tax proceeds distributed pursuant to Subsection E or Subsection F, as applicable, of Section 7-1-6.11 NMSA 1978 in excess of the amount required for immediate payment or designation for payment of principal, interest, premiums and expenses on bonds. All money in the credit enhancement account in excess of the monthly amount required for immediate payment or designation for payment of principal, interest, premiums and expenses on bonds shall be transferred monthly by the authority to the general fund.

E. Upon payment of all principal, interest, premiums and expenses on bonds additionally secured by a pledge of amounts deposited in the credit enhancement account, the authority shall certify to the secretary of taxation and revenue that all obligations for bonds have been fully discharged and shall direct the secretary of taxation and revenue and the state treasurer to cease distributing cigarette tax proceeds to the authority pursuant to Subsection G of Section 7-1-6.11 NMSA 1978 and to distribute those cigarette tax proceeds to the general fund.

F. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax 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 those cigarette tax proceeds distributed to the credit

enhancement account, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge."

Section 6. EFFECTIVE DATE.--

A. The effective date of the provisions of Section 1 of this act is August 1, 2003.

B. The effective date of the provisions of Sections 2 through 5 of this act is July 1, 2003.

SENATE FINANCE COMMITTEE

SUBSTITUTE FOR SENATE BILLS 804,

336, 717 AND 835, AS AMENDED

CHAPTER 342

CHAPTER 342, LAWS 2003

AN ACT

RELATING TO HUMAN IMMUNODEFICIENCY VIRUS TESTING; PROVIDING FOR AN EXEMPTION TO THE INFORMED CONSENT REQUIREMENT; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 24-2B-5 NMSA 1978 (being Laws 1989, Chapter 227, Section 5, as amended) is amended to read:

"24-2B-5. INFORMED CONSENT NOT REQUIRED.--Informed consent for testing is not required and the provisions of Section 24-2B-2 NMSA 1978 do not apply for:

A. a health care provider or health facility performing a test on the donor or recipient when the health care provider or health facility procures, processes, distributes or uses a human body part, including tissue and blood or blood products, donated for a purpose specified under the Uniform Anatomical Gift Act or for transplant recipients or semen provided for the purpose of artificial insemination and such test is necessary to assure medical acceptability of a recipient or such gift or semen for the purposes intended;

B. the performance of a test in bona fide medical emergencies when the subject of the test is unable to grant or withhold consent and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, except that post-test counseling or referral for counseling shall nonetheless be required when the individual is able to receive that post-test counseling. Necessary treatment shall not be withheld pending test results;

C. the performance of a test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;

D. the performance of a test done in a setting where the identity of the test subject is not known, such as in public health testing programs and sexually transmitted disease clinics; or

E. the performance of a prenatal test to determine if the human immunodeficiency virus or its antigen is present in a pregnant woman; provided that the woman, or her authorized representative, after having been informed of the option to decline the human immunodeficiency virus test, may choose to not have the human immunodeficiency virus test performed as a part of the routine prenatal testing if she or her authorized representative provides a written statement as follows:

"I am aware that a test to identify the human immunodeficiency virus or its antigen or antibody is a part of routine prenatal testing. However, I voluntarily and knowingly choose to not have the human immunodeficiency virus test performed.

(Name of patient or authorized representative, signature and date)."

SENATE BILL 805, AS AMENDED

CHAPTER 343

CHAPTER 343, LAWS 2003

AN ACT

RELATING TO DENTISTRY; CLARIFYING THE APPLICATION OF THE DENTAL HEALTH CARE ACT TO MEDICAID AND CERTAIN SECTIONS OF THE NEW MEXICO INSURANCE CODE; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 27-2-12 NMSA 1978 (being Laws 1973, Chapter 376, Section 16, as amended) is amended to read:

"27-2-12. MEDICAL ASSISTANCE PROGRAMS.--Consistent with the federal act and subject to the appropriation and availability of federal and state funds, the medical assistance division of the human services department may by regulation provide medical assistance, including the services of licensed doctors of oriental medicine, licensed chiropractic physicians and licensed dental hygienists in collaborative practice, to persons eligible for public assistance programs under the federal act."

Section 2. Section 59A-22-32 NMSA 1978 (being Laws 1984, Chapter 127, Section 454, as amended) is amended to read:

"59A-22-32. FREEDOM OF CHOICE OF HOSPITAL AND PRACTITIONER.--

A. Within the area and limits of coverage offered an insured and selected by him in the application for insurance, the right of any person to exercise full freedom of choice in the selection of any hospital for hospital care or of any practitioner of the healing arts or optometrist, psychologist, podiatrist, certified nurse-midwife, registered lay midwife or registered nurse in expanded practice, as defined in Subsection B of this section, for treatment of any illness or injury within his scope of practice shall not be restricted under any new policy of health insurance, contract or health care plan issued after June 30, 1967 in this state or in the processing of any claim thereunder. Any person insured or claiming benefits under any such health insurance policy, contract or health care plan providing within its coverage for payment of service benefits or indemnity for hospital care or treatment of persons for the cure or correction of any physical or mental condition shall be deemed to have complied with the requirements of the policy, contract or health care plan as to submission of proof of loss upon submitting written proof supported by the certificate of any hospital currently licensed by the department of health or any practitioner of the healing arts or optometrist, psychologist, podiatrist, certified nurse-midwife, registered lay midwife or registered nurse in expanded practice.

B. As used in this section:

(1) "hospital care" means hospital service provided through a hospital that is maintained by the state or any political subdivision of the state or any place that is currently licensed as a hospital by the department of health and has accommodations for resident bed patients, a licensed professional registered nurse always on duty or call, a laboratory and an operating room where surgical operations are performed, but "hospital care" does not include a convalescent or nursing or rest home;

(2) "practitioner of the healing arts" means any person holding a license or certificate authorizing the licensee to offer or undertake to diagnose, treat,

operate on or prescribe for any human pain, injury, disease, deformity or physical or mental condition pursuant to:

(a) the Chiropractic Physician Practice Act;

(b) the Dental Health Care Act;

(c) the Medical Practice Act;

(d) Chapter 61, Article 10 NMSA 1978; and

(e) the Acupuncture and Oriental Medicine Practice Act;

(3) "optometrist" means any person holding a license provided for in the Optometry Act;

(4) "podiatrist" means any person holding a license provided for in the Podiatry Act;

(5) "psychologist" means a person who is duly licensed or certified in the state where the service is rendered and has a doctoral degree in psychology and has had at least two years of clinical experience in a recognized health setting or has met the standards of the national register of health service providers in psychology;

(6) "certified nurse-midwife" means any person licensed by the board of nursing as a registered nurse and who is registered with the public health division of the department of health as a certified nurse-midwife;

(7) "registered lay midwife" means any person who practices lay midwifery and is registered as a registered lay midwife by the public health division of the department of health; and

(8) "registered nurse in expanded practice" means any person licensed by the board of nursing as a registered nurse approved for expanded practice pursuant to the Nursing Practice Act as a certified nurse practitioner, certified registered nurse anesthetist, certified clinical nurse specialist in psychiatric mental health nursing or clinical nurse specialist in private practice and who has a master's degree or doctorate in a defined clinical nursing speciality and is certified by a national nursing organization.

C. This section shall apply to any such policy that is delivered or issued for delivery in this state on or after July 1, 1979 and to any existing group policy or plan on its anniversary or renewal date after June 30, 1979 or at expiration of the applicable collective bargaining contract, if any, whichever is later."

Section 3. Section 59A-46-35 NMSA 1978 (being Laws 1987, Chapter 335, Section 1, as amended) is amended to read:

"59A-46-35. PROVIDER DISCRIMINATION PROHIBITED.--No class of licensed individual providers willing to meet the terms and conditions offered by a health maintenance organization shall be excluded from a health maintenance organization. For purposes of this section, "providers" means those persons licensed pursuant to:

- A. the Optometry Act;
- B. Section 61-3-23.2 NMSA 1978;
- C. the Chiropractic Physician Practice Act;
- D. the Dental Health Care Act;
- E. the Medical Practice Act;
- F. the Podiatry Act;
- G. the Professional Psychologist Act;
- H. Chapter 61, Article 10 NMSA 1978; or
- I. the Pharmacy Act."

Section 4. A new section of the Nonprofit Health Care Plan Law, Section 59A-47-28.4 NMSA 1978, is enacted to read:

"59A-47-28.4. COVERAGE FOR COLLABORATIVE PRACTICE DENTAL HYGIENISTS.--An individual or group subscriber contract delivered or issued for delivery in New Mexico that, on a prepaid, service or indemnity basis provides for treatment of persons for the prevention, cure or correction of any illness or physical or mental condition shall include coverage for the services of a dental hygienist in a collaborative practice pursuant to the Dental Health Care Act."

SENATE BILL 818, AS AMENDED

CHAPTER 344

CHAPTER 344, LAWS 2003

AN ACT

RELATING TO HEALTH; LIMITING CERTAIN MEDICAID PRIOR AUTHORIZATION REQUIREMENTS FOR MEDICATIONS PRESCRIBED FOR PERSONS WITH SEVERE MENTAL ILLNESS.

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

Section 1. Section 27-2C-3 NMSA 1978 (being Laws 2002, Chapter 105, Section 3) is amended to read:

"27-2C-3. MEDICAID FORMULARY FOR PRESCRIPTION DRUGS.--

A. The department shall develop or implement a formulary or preferred drug list, taking into consideration the clinical efficacy, safety and cost effectiveness of a product.

B. The department shall ensure that the administration or delivery of health care services and products under the medicaid program includes a formulary that will provide medically appropriate drug therapies for patients.

C. The department shall require a prior authorization before a drug not listed on the medicaid program formulary may be dispensed unless otherwise provided pursuant to Subsection C of Section 27-2C-4 NMSA 1978.

D. The department shall ensure that atypical antipsychotic medications are available in the same manner as conventional antipsychotic medications for medicaid patients for the treatment of severe mental illnesses that are listed in a current national diagnostic and statistical manual of mental disorders published by a national psychiatric association, including schizophrenia, clinical depression, bipolar disorder, anxiety-panic attack disorder and obsessive compulsive disorder."

SENATE BILL 822, AS AMENDED

CHAPTER 345

CHAPTER 345, LAWS 2003

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING A SECTION OF THE PUBLIC EMPLOYEES RETIREMENT ACT TO CHANGE THE TYPES OF INVESTMENTS AUTHORIZED FOR STATE RETIREMENT TRUST FUNDS.

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

Section 1. Section 10-11-132 NMSA 1978 (being Laws 1987, Chapter 253, Section 132, as amended) is amended to read:

"10-11-132. INVESTMENT OF FUNDS--TYPES OF INVESTMENTS--INDEMNIFICATION OF BOARD MEMBERS.--The funds created by the state retirement system acts are trust funds of which the retirement board is trustee. Members of the retirement board jointly and individually shall be indemnified from the funds by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and 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; provided that the securities shall have a minimum credit rating of B according to the Standard and Poor's rating system or B

according to the Moody's investors rating system or their equivalents; and provided that not more than ten percent of the funds for which the retirement board is trustee shall at any one time be invested in debt obligations of corporations with a credit rating less than BBB according to the Standard and Poor's rating system or Baa according to the Moody's investors rating system of their equivalents;

F. 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 corporation organized and operating within the United States 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 shareholders' equity of twenty-five million dollars (\$25,000,000) and that the funds of which the retirement board is trustee shall not be invested in more than ten percent of the voting stock of a company; and further provided that investing with enhanced index managers using futures and options is permitted solely for the purpose of adding incremental value and controlling risk and not for speculation;

G. 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;

H. 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;

I. 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

J. contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specified prices at a price differential representing the interest income to be earned by the retirement board. No such contract shall be entered into unless the contract is fully secured by obligations of the United States, or other securities backed by the United States, having a market value of at least one hundred two percent of the amount of the contract. The collateral required in this section shall be delivered to the state fiscal agent or his designee contemporaneously with the transfer of funds or delivery of the securities, at the earliest time industry practice permits, but in all cases settlement shall be on a same day basis. No such contract shall be entered into unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars (\$500,000,000)."

SENATE BILL 831

CHAPTER 346

CHAPTER 346, LAWS 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; AMENDING THE PUBLIC REGULATION COMMISSION ACT PROVISIONS FOR COMMUNICATIONS AMONG PARTIES, STAFF AND THE COMMISSION IN CONNECTION WITH RULEMAKING AND ADJUDICATORY HEARINGS.

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

Section 1. Section 8-8-12 NMSA 1978 (being Laws 1998, Chapter 108, Section 12) is amended to read:

"8-8-12. UTILITY DIVISION.--

A. The utility division shall serve as staff to the commission in the regulation of electric, natural gas, renewable energy sources, telecommunications and water and wastewater systems as provided by law.

B. The commission shall set minimum educational and experience requirements for the director of the utility division.

C. The utility division shall represent the public interest in utility matters before the commission and may present testimony and evidence and cross-examine witnesses. In order to represent the public interest, the utility division shall present to the commission its beliefs on how the commission should fulfill its responsibility to balance the public interest, consumer interest and investor interest.

D. The utility division shall perform the functions of the telecommunications department of the former state corporation commission and staff functions, not including advisory functions, of the former New Mexico public utility commission.

E. Utility division staff shall not have ex parte communications with commissioners or a hearing examiner assigned to a utility case, except as expressly permitted pursuant to Section 8-8-17 NMSA 1978."

Section 2. Section 8-8-14 NMSA 1978 (being Laws 1998, Chapter 108, Section 14) is amended to read:

"8-8-14. HEARING EXAMINERS.--

A. The commission may appoint a commissioner or a hearing examiner to preside over any matter before the commission, including rulemakings, adjudicatory hearings and administrative matters.

B. Except as provided in the New Mexico Insurance Code, a hearing examiner shall provide the commission with a recommended decision on the matter assigned to him, including findings of fact and conclusions of law. The recommended decision shall be provided to the parties, and they may file exceptions to the decision prior to the final decision of the commission.

C. When the commission has appointed a hearing examiner to preside over a matter, at least one member of the commission shall, at the request of a party to the proceedings, attend oral argument."

Section 3. Section 8-8-17 NMSA 1978 (being Laws 1998, Chapter 108, Section 17) is amended to read:

"8-8-17. EX PARTE COMMUNICATIONS.--

A. A commissioner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking or adjudication.

C. Notwithstanding the provisions of Subsections A and B of this section, the following ex parte communications are permitted:

(1) where circumstances require, ex parte communications for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are allowed if the commissioner or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication and the commissioner or hearing examiner makes provision to promptly notify all other parties of the substance of the ex parte communication;

(2) a commissioner may consult with another commissioner or with advisory staff whose function is to advise the commission in carrying out the commissioner's rulemaking or adjudicative responsibilities;

(3) a hearing examiner may consult with the commission's advisory staff;

(4) a commissioner or hearing examiner may obtain the advice of a nonparty expert on an issue raised in the rulemaking or adjudication if the commissioner or hearing examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond; and

(5) pursuant to the public regulation commission's rulemaking authority, a party to a proceeding may consult with the commission's advisory staff.

D. A commissioner or hearing examiner who receives or who makes or knowingly causes to be made a communication prohibited by this section shall disclose it to all parties and give other parties an opportunity to respond.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a commissioner or hearing examiner in violation of this section, the commissioner or hearing examiner may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section."

SENATE CORPORATIONS AND TRANSPORTATION

COMMITTEE SUBSTITUTE FOR

SENATE BILL 903, AS AMENDED

CHAPTER 347

CHAPTER 347, LAWS 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
EXTENDING THE GEOGRAPHIC BOUNDARY FOR A NATURAL GAS OR
GEOTHERMAL UTILITY.

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

Section 1. Section 3-25-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-24-3, as amended) is amended to read:

"3-25-3. NATURAL GAS OR GEOTHERMAL UTILITY--EXTENT OF FACILITIES--DISTRIBUTION TO CONSUMERS BEYOND THE MUNICIPAL BOUNDARY--WITHIN THE BOUNDARY OF ANOTHER MUNICIPALITY--APPROVAL OF OTHER MUNICIPALITY AND PUBLIC REGULATION COMMISSION.--

A. The natural gas or geothermal utility may include but is not limited to:

(1) in the municipality and within one hundred miles of the municipal boundary, facilities appropriate to the transportation, pumping, storage or purification of natural gas or geothermal waters; and

(2) in the municipality and within five miles of the municipal boundary, facilities for the distribution of natural gas or geothermal heat.

The natural gas or geothermal utility shall include any land or real estate needed for the location of the facilities.

B. A municipality shall not acquire and operate natural gas or geothermal distribution facilities in whole or in part within the boundary of another municipality, as then existing, until the:

(1) public regulation commission issues an order authorizing the acquisition and operation of the natural gas or geothermal distribution facilities; and

(2) other municipality authorizes, by ordinance, the acquisition and operation of the natural gas or geothermal distribution facilities.

C. No formal franchise need be granted by the other municipality, and the ordinance granting the consent of the other municipality:

(1) shall be sufficient;

(2) may be adopted on a single reading;

(3) may become immediately effective;

(4) shall not be subject to a referendum; and

(5) shall be valid for such period of years as may be specified in the ordinance."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE CORPORATIONS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR SENATE BILL 904

CHAPTER 348

CHAPTER 348, LAWS 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH AND SAFETY; RELATING TO COURTS; INCREASING THE NUMBER OF JUDGES IN CERTAIN JUDICIAL DISTRICTS.

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

Section 1. Section 34-6-6 NMSA 1978 (being Laws 1968, Chapter 69, Section 9, as amended) is amended to read:

"34-6-6. JUDGES--THIRD JUDICIAL DISTRICT.--There shall be seven district judges in the third judicial district."

Section 2. Section 34-6-9 NMSA 1978 (being Laws 1968, Chapter 69, Section 12, as amended) is amended to read:

"34-6-9. JUDGES--SIXTH JUDICIAL DISTRICT.--There shall be three district judges in the sixth judicial district. The judge of division 1 shall reside and maintain his principal office in Grant county."

Section 3. TEMPORARY PROVISION--DISTRICT JUDGESHIPS--APPOINTMENTS.--The additional district judgeships provided for in this act shall be filled by appointment by the governor pursuant to the provisions of Article 6 of the constitution of New Mexico.

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 906

CHAPTER 349

CHAPTER 349, LAWS 2003

AN ACT

RELATING TO FINANCE; ENACTING THE STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT; AUTHORIZING THE CREATION OF A STATEWIDE ECONOMIC DEVELOPMENT FINANCE PROGRAM; AUTHORIZING THE ISSUANCE OF ECONOMIC DEVELOPMENT BONDS, LOAN PARTICIPATIONS AND LOAN GUARANTEES ON BEHALF OF ENTITIES ENGAGED IN QUALIFYING ECONOMIC DEVELOPMENT PROJECTS; MAKING AN APPROPRIATION.

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 "Statewide Economic Development Finance Act".

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) an important purpose of government is to promote, support and assist in developing a thriving economic base within the state; increase opportunities for gainful employment and improved living conditions; assist in promoting a balanced and productive economy; encourage the flow of private capital for investment in productive

enterprises; and otherwise improve the prosperity, health and general welfare of the people of the state;

(2) in order to attract and encourage established businesses to locate in New Mexico, to retain and expand existing New Mexico businesses and to provide an environment that supports new and emerging businesses within the state, New Mexico communities must be able to provide basic infrastructure and educational, cultural and recreational facilities that require substantial financial resources beyond those of many New Mexico communities;

(3) other states have agencies dedicated to providing financing for economic development projects, which agencies work directly with the state, cities, counties and regional economic development agencies to provide the necessary financing related to retaining and attracting businesses and to provide financing to qualified nonprofit corporations that provide community housing, education, health care and cultural facilities;

(4) it is necessary to provide coordinated planning and financing resources to address community and cultural infrastructure needs; and

(5) the combined expertise and resources of the economic development department and the New Mexico finance authority should be utilized:

(a) for the effective promotion of economic development within the state;

(b) to increase the gainful employment of the citizens and decrease the cost of social services and unemployment compensation;

(c) to increase the tax base of the state; and

(d) to improve the prosperity, health and welfare of the people of the state.

B. The purpose of the Statewide Economic Development Finance Act is to stimulate economic development with a needed program in the public interest that serves a necessary and valid public purpose.

Section 3. DEFINITIONS.--As used in the Statewide Economic Development Finance Act:

A. "authority" means the New Mexico finance authority;

B. "department" means the economic development department;

C. "economic development bonds" or "bonds" means bonds, notes or other instruments issued by the authority pursuant to the Statewide Economic Development Finance Act;

D. "economic development goal" means the retention and expansion of existing business enterprises, the attraction of new business enterprises or the creation and promotion of an environment suitable for the support of start-up and emerging business enterprises within the state, whether the business enterprises are for-profit or not-for-profit;

E. "eligible entity" means the person operating a project; "eligible entity" may include a for-profit business enterprise, including a corporation, limited liability company, partnership or other entity, determined by the department to be engaged in a project enterprise that serves an economic development goal and is suitable for financing assistance;

F. "financing assistance" means financing provided by the authority to eligible entities pursuant to the Statewide Economic Development Finance Act or the New Mexico Finance Authority Act that may be in the form of economic development bonds, loan participations or loan guarantees;

G. "local school district" means a school district in which is located project property that has been or will be exempted from property taxes pursuant to the Statewide Economic Development Finance Act;

H. "mortgage" means a mortgage, deed of trust or pledge of any assets as a collateral security;

I. "opt-in agreement" means an agreement entered into between the department and a qualifying county, a school district and, if applicable, a qualifying municipality that provides for county, local school district and, if applicable, municipal approval of a project, subject to compliance with all local zoning, permitting and other land use regulations, and for payments in lieu of taxes to the qualifying county, local school district and, if applicable, qualifying municipality as provided by the Statewide Economic Development Finance Act;

J. "payment in lieu of taxes" means the total annual payment, including any state in-lieu payment, paid as compensation for the tax impact of a project, in an amount negotiated and determined in the opt-in agreement between the department and the qualifying county, the local school district and, if applicable, the qualifying municipality, which payment shall be distributed to the county, municipality and local school district in the same proportion as property tax revenues are normally distributed to those recipients;

K. "project" means the acquisition and use of land, buildings, other improvements and other project property for use by an eligible entity as:

(1) industrial facilities;

(2) commercial facilities, including facilities for wholesale sales and services;

(3) health care facilities, including hospitals, clinics, laboratory facilities and related office facilities;

(4) educational facilities, including schools;

(5) arts and cultural facilities, including museums, theaters, arenas or assembly halls; and

(6) recreational and tourism facilities, including parks, pools, trails, open space and equestrian facilities;

L. "project property" means any land and improvements thereon, buildings and improvements thereto, machinery and equipment of all kinds necessary to the project, operating capital and other personal property deemed necessary in connection with the project;

M. "qualifying municipality or county" means a municipality or county that enters into an opt-in agreement;

N. "state in-lieu payment" means an annual payment, in an amount determined by the department, that will be distributed to a qualifying county, a local school district and, if applicable, a qualifying municipality in the same proportion as property tax revenues are normally distributed to those recipients; and

O. "tax impact of a project" means the annual reduction in property tax revenue to affected property tax revenue recipients directly resulting from the conveyance of property to the department.

**Section 4. ECONOMIC DEVELOPMENT DEPARTMENT--
ADDITIONAL POWERS.--Consistent with the provisions of the
Statewide Economic Development Finance Act, the department
may:**

A. acquire, whether by construction, purchase, gift or lease, and hold fee simple title to or other interest in any project or project property;

B. enter into a lease of property in connection with any project or project property;

C. sell, lease or otherwise dispose of any project property;

D. assign lease payments, rents and any other revenues derived from a project to the authority pursuant to leases, mortgages or indentures securing payment of the principal of, interest on and any other charges and expenses relating to bonds issued by the authority;

E. make state in-lieu payments to a qualifying county, a local school district and, if applicable, a qualifying municipality to offset the tax impact of a project; and

F. coordinate with the authority:

(1) for the authority's provision of staffing support and assistance in carrying out the department's responsibilities under the Statewide Economic Development Finance Act; and

(2) to enter into memoranda of understanding or such other agreements as the department and authority deem appropriate for such purposes.

Section 5. ADDITIONAL DUTIES OF THE ECONOMIC DEVELOPMENT DEPARTMENT AND THE NEW MEXICO FINANCE AUTHORITY--OPT-IN AGREEMENTS.--

A. For the purpose of recommending projects to the authority for financing assistance, the department and the authority shall coordinate to:

(1) survey potential eligible entities and projects and provide outreach services to local governments and eligible entities, for the purpose of identifying and recommending projects to the authority for financing assistance;

(2) evaluate potential projects for suitability for financing assistance;

(3) formulate recommendations of projects that are suitable for financing assistance; and

(4) obtain input and information from the authority relevant to the establishment and implementation of criteria for evaluating potential projects.

B. The department, with such staffing and other assistance from the authority as the department may request, shall propose to enter into opt-in agreements with counties, local school districts and municipalities for the purpose of facilitating local government approvals necessary to permit projects to proceed. Opt-in agreements shall provide:

(1) for project compliance with all applicable local land use regulations;

(2) for payments in lieu of taxes to qualifying counties, local school districts and, if applicable, qualifying municipalities to mitigate the tax impact of a project;

(3) that financing assistance is conditioned upon compliance with:

(a) all applicable ordinances, regulations and codes of a local government concerning planning, zoning and development permitting; and

(b) such other requirements as the department and the county, school district and municipality may agree to include;

(4) that the payments in lieu of taxes shall be distributed in a manner and in amounts calculated in accordance with the provisions of Section 14 of the Statewide Economic Development Finance Act; and

(5) that the county, school district or municipality reserves the right to withdraw from the agreement if it determines that the project subject to the agreement does not satisfy the requirements enumerated in the opt-in agreement.

C. The department shall adopt rules for the exercise of its powers and responsibilities pursuant to the Statewide Economic Development Finance Act.

Section 6. NEW MEXICO FINANCE AUTHORITY--ADDITIONAL POWERS AND DUTIES.--

A. Consistent with the provisions of the Statewide Economic Development Finance Act, the authority may:

(1) issue economic development bonds, notes or other debt instruments on behalf of an eligible entity, payable from the revenues of a project and other revenues authorized as security for the bonds, to finance a project on behalf of an eligible entity;

(2) enter into loan participation agreements on behalf of eligible entities, whether in the form of an interest rate buy-down, the purchase of loans originated and underwritten by third-party lenders or other similar arrangements;

(3) offer loan guarantees;

(4) make, enter into and enforce all contracts necessary, convenient or desirable for purposes of the authority or pertaining to the other powers granted pursuant to the Statewide Economic Development Finance Act;

(5) make and execute contracts for the origination, administration, servicing or collection of any loan, and to pay the reasonable value of services rendered to the authority pursuant to the contracts;

(6) fix, revise from time to time, charge and collect fees and other charges in connection with the issuance of bonds; the making, purchase or guaranty of loans; and any other services rendered by the authority;

(7) employ architects, engineers, accountants and attorneys; construction and financial experts; and such other advisors, consultants and agents as may be necessary in its judgment, and fix and pay their compensation;

(8) acquire fee simple, leasehold, mortgagor's or mortgagee's interests in real or personal property and to sell, mortgage, convey, lease or assign that property for authority purposes; and

(9) in the event of default by an eligible entity, enforce its rights by suit, mandamus and all other remedies available under state law.

B. The authority shall adopt policies and procedures to:

(1) establish minimum credit qualifications for financing assistance to eligible entities for projects recommended by the department;

(2) establish procedures for applying for financing assistance; and

(3) establish fees to pay the costs of originating and administering financing assistance.

C. The authority shall coordinate with the department to provide staffing and other assistance to the department in carrying out the department's responsibilities and activities pursuant to the Statewide Economic Development Finance Act.

Section 7. ECONOMIC DEVELOPMENT BONDS.--

A. The authority may issue economic development bonds on behalf of an eligible entity to provide funds for a project recommended by the department for financing assistance. Bonds issued pursuant to the Statewide Economic Development Finance Act shall not be a general obligation of the authority or the state within the meaning of any provision of the constitution of New Mexico, and shall never give rise to a pecuniary liability of the authority or the state or a charge against the general credit or taxing powers of the state, and every bond issued pursuant to the Statewide Economic Development Finance Act shall state that fact plainly on its face. Bonds shall be payable from the revenue derived from a project being financed by the bonds and from other revenues pledged by an eligible entity, and may be secured in such manner as provided in the Statewide Economic Development Finance Act and as deemed appropriate by

the authority. Bonds may be executed and delivered at any time, and from time to time, may be in such form and denominations, may be of such tenor, may be payable in such installments and at such time or times not exceeding thirty years from their date of delivery, may be payable at such place or places, may bear interest at such rate or rates payable at such place or places and evidenced in such manner and may contain such provisions not inconsistent with the Statewide Economic Development Finance Act, all as shall be provided in the resolution and proceedings of the authority authorizing issuance of the bonds. Bonds issued by the authority pursuant to the Statewide Economic Development Finance Act may be sold at public or private sale in such manner and from time to time as may be determined by the authority to be most advantageous, and the authority may pay all expenses; attorney, engineering and architect fees; premiums; and commissions that the authority may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds. All bonds issued pursuant to the Statewide Economic Development Finance Act shall be construed to be negotiable.

B. The principal of and interest on bonds issued pursuant to the Statewide Economic Development Finance Act shall be secured by a pledge of the revenues of the project being financed with the proceeds of the bonds, may be secured by a mortgage of all or any part of the project property being financed or other collateral pledged by an eligible entity, and may be secured by the lease of such project property, which collateral and lease may be assigned, in whole or in part, by the department to the authority or to third parties to carry out the purposes of the Statewide Economic Development Finance Act. The resolution of the authority pursuant to which the bonds are authorized to be issued or any such mortgage may contain any agreement and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any project to which the resolution or mortgage pertains, the terms to be incorporated in the lease of the project property, the maintenance and insurance of the project property, the creation and maintenance of special funds from the revenues of the project and the rights and remedies available in event of default to the bondholders or to the trustee under a mortgage, all as the authority or the department shall deem advisable and as shall not be in conflict with the Statewide Economic Development Finance Act; provided, however, that in making any such agreements or provisions the authority and the department may obligate themselves except with respect to the project and application of the revenues therefrom, and except as expressly permitted by the Statewide Economic Development Finance Act, and shall not have the power to incur a pecuniary liability or a charge, or to pledge the general credit or taxing power of the state. The resolution authorizing the issuance of bonds may provide procedures and remedies in the event of default in payment of the principal of or interest on the bonds or in the performance of any agreement. No breach of any such agreement shall impose any pecuniary liability upon the authority, the department or the state or any charge against the general credit or taxing powers of the state.

C. The authority may arrange for such other guarantees, insurance or other credit enhancements or additional security provided by an eligible entity as the

authority may deem appropriate for the bonds and may provide for the payment of the costs of the same from the proceeds of the bonds, or may require payment of the costs by the eligible entity on whose behalf the bonds are issued.

D. Bonds issued to finance a project may also be secured by pledging a portion of the qualifying municipal or county infrastructure gross receipts tax revenues by the municipality or county in which the project is located, as permitted by the Local Economic Development Act.

E. The bonds and the income from the bonds, all mortgages or other instruments executed as security for the bonds, all lease agreements made pursuant to the provisions hereof and revenue derived from any sale or lease of project property shall be exempt from all taxation by the state or any political subdivision. The authority may issue bonds the interest on which is exempt from taxation under federal law.

F. In any calendar year, no more than fifteen percent of the state ceiling allocated pursuant to the Private Activity Bond Act may be used for projects financed with bonds issued pursuant to the Statewide Economic Development Finance Act.

Section 8. LEASES OF PROJECT PROPERTY.--

A. Prior to the department's lease of any project property to an eligible entity, the authority shall determine:

(1) the amount necessary in each year to pay the principal of and interest on bonds proposed to be issued to finance the project;

(2) the amount necessary to be paid each year into any reserve funds that the authority may deem advisable to establish in connection with the retirement of the proposed bonds and the maintenance and repair of the project property; and

(3) unless the terms under which the project property is to be leased provide that the lessee shall maintain the project property and carry all proper insurance with respect thereto, the estimated cost of maintaining the project property in good repair and keeping it properly insured.

B. The determinations required by Subsection A of this section shall be set forth in the resolution under which the proposed bonds are to be issued; and prior to the issuance of the bonds, the department shall lease the project property to a lessee or purchaser pursuant to an agreement conditioned upon completion of the project and providing for payment to the department and assigned to the authority or a trustee, of such rentals or payments as will be sufficient to:

(1) pay the principal of and interest on the bonds issued to finance the project;

(2) build up and maintain any reserve deemed by the authority to be advisable in connection with the bonds; and

(3) pay the costs of maintaining the project property in good repair and keeping it properly insured, unless the lease obligates the lessee to pay for the maintenance and insurance of the project property.

Section 9. REFUNDING BONDS.--

A. Outstanding economic development bonds may at any time and from time to time be refunded by the authority by issuing its refunding bonds in such amounts as the authority may determine to refund all or a portion of the principal of the bonds, all unpaid accrued and unaccrued interest on the bonds to the normal maturity date of such bonds or to selected prior redemption dates thereof, any redemption premiums, any commission and all estimated costs incidental to the issuance of such bonds and to such refunding as may be determined by the authority. The principal amount of refunding bonds may be equal to, less than or greater than the principal amount of the bonds to be refunded. Any such refunding may be effected whether the bonds to be refunded have matured or will 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 thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided that the holders of any bonds to be refunded shall not be compelled without their consent 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. Refunding bonds shall be payable from the revenues out of which other bonds issued pursuant to the Statewide Economic Development Finance Act may be payable or from the 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 as provided in this section, or from any combination of the foregoing sources, and may be secured in the manner that other bonds issued pursuant to the Statewide Economic Development Finance Act may be secured.

B. Proceeds of refunding bonds shall either be applied immediately to the retirement of the bonds being refunded or placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers. Notwithstanding any other provision of law, the escrowed proceeds may be invested in short-term or long-term securities. Except to the extent inconsistent with the express terms of the Statewide Economic Development Finance Act, the resolution of the authority pursuant to which the bonds to be refunded were issued, including any mortgage or trust indenture securing the bonds, shall govern the establishment of any escrow in connection with the refunding bonds and the investment or reinvestment of any escrowed proceeds.

Section 10. USE OF BOND PROCEEDS.--The proceeds from the sale of bonds issued pursuant to the Statewide Economic Development Finance Act shall be applied only for the purpose for

which the bonds were issued and cost related to the acquisition of the project property. The cost of acquiring any project property shall include the following:

- A. the cost of the construction of any part of project property that may be constructed, including architect, engineering and attorney fees;
- B. the purchase price of any part of project property that may be acquired by purchase;
- C. the cost of the extension of any utility to the project site;
- D. all expenses in connection with the authorization, sale and issuance of the bonds; and
- E. the interest on the bonds for a reasonable time prior to construction, during construction and a reasonable time after completion of construction.

Section 11. BONDS LEGAL INVESTMENTS.--Bonds issued pursuant to the Statewide Economic Development Finance Act shall be legal investments for savings banks and insurance companies organized under the laws of the state.

Section 12. LOAN PARTICIPATIONS.--The authority may purchase loans or participations in loans to eligible entities by third-party lenders for projects recommended by the department, in amounts and pursuant to such terms as the authority deems appropriate pursuant to the authority's rules, where:

- A. the third-party lender is responsible for the origination, underwriting, servicing and administration of the loan; and
- B. the portion of the loan purchased or underwritten by the authority is secured by a lien on a parity with the lien obtained by the third-party lender in any collateral, pursuant to which the authority's rights in such collateral may be exercised on a pro-rata basis with the third-party lender's rights in the collateral.

Section 13. STATEWIDE LOAN PARTICIPATION FUND.--

A. The "statewide loan participation fund" is created within the authority. The fund shall be administered by the authority as a separate account and may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures for administering the fund in accordance with the Statewide Economic Development Finance Act.

B. Except as otherwise provided in the Statewide Economic Development Finance Act, money from payments of principal of and interest on loan participations and other securities held by the authority for projects receiving financing assistance based upon the department's recommendation shall be deposited in the fund; provided that fees charged by the authority to pay the costs of originating and administering loans, loan participations or loan guarantees for projects, other than interest, shall not be deposited in the fund, but shall be deposited in a separate account and may be used by the authority to meet its administrative costs.

C. Except as otherwise provided in the Statewide Economic Development Finance Act, money in the fund is appropriated to the authority to pay the reasonably necessary costs of originating and servicing loan participations, to purchase loan participations and to purchase securities to assist eligible entities in financing projects in accordance with the Statewide Economic Development Finance Act and pursuant to the recommendation of each project by the department.

D. Money in the fund that is not needed for immediate disbursement, including money held in reserve, may be deposited or invested in the same manner as other funds administered by the authority.

E. Money on deposit in the fund may be designated as a reserve for bonds issued by the authority pursuant to the Statewide Economic Development Finance Act, including bonds payable from sources other than the fund, and the authority may covenant in any bond resolution or trust indenture to maintain and replenish the reserve from money deposited in the fund after issuance of bonds by the authority.

F. Money in the fund may be used to purchase bonds issued by the authority pursuant to the Statewide Economic Development Finance Act, which are payable from any designated source of revenues or collateral. Purchasing and holding the bonds shall not result in cancellation or merger of the bonds, notwithstanding the fact that the authority as the issuer of the bonds is obligated to make the required debt service payments and the fund held by the authority is entitled to receive the required debt service payments.

Section 14. TAX IMPACT FUND.--

A. The "tax impact fund" is created within the state treasury. The fund shall consist of money appropriated to the fund and money distributed to the fund by law. Money remaining in the fund at the end of each fiscal year shall not revert, but shall remain in the fund for the purposes set forth in the Statewide Economic Development Finance Act. For the purpose of mitigating the tax impact of a project, money in the fund shall be disbursed by warrant of the department of finance and administration, upon vouchers submitted by the department, to qualifying counties, school districts and, if applicable, qualifying municipalities as state in-lieu payments in the same proportion as property taxes are distributed.

B. State in-lieu payments from the tax impact fund shall be made as a portion of the total amount of the annual payment in lieu of taxes required in the opt-in agreement. The amount of state in-lieu payments shall be determined by the department, as specified in the opt-in agreement, and shall be subject to the availability of money in the tax impact fund in each fiscal year during the term of the opt-in agreement.

C. In each fiscal year during the term of an opt-in agreement, a county, school district and, if applicable, a municipality shall qualify to receive state in-lieu payments in connection with project property when the following conditions are satisfied:

(1) title to project property has been transferred to the department in connection with financing assistance provided pursuant to the Statewide Economic Development Finance Act, resulting in an exemption from property taxes that the qualifying county, local school district and, if applicable, qualifying municipality would otherwise have been entitled to receive;

(2) pursuant to an opt-in agreement, the qualifying county, local school district and, if applicable, qualifying municipality have certified to the department in advance that it supports the project, subject to the project's compliance with the planning, zoning, subdivision, building code and other applicable laws and regulations governing land use;

(3) pursuant to an opt-in agreement, the county, the local school district and, if applicable, the municipality and the department have agreed on the amount of the annual payment in lieu of taxes; and

(4) the department has determined that there is sufficient money on deposit in the tax impact fund in the current fiscal year to make distributions of state in-lieu payments for the project.

D. The department shall establish by rule procedures for certification by local governments concerning project support, notification of local school boards concerning financing and qualification for state in-lieu payments.

E. The amount of state in-lieu payments that a qualifying county, local school district and, if applicable, qualifying municipality are entitled to receive shall be determined by the department based upon:

(1) the annual reduction in property tax revenue received by the qualifying county, local school district and, if applicable, qualifying municipality that results from the transfer of title to project property to the department;

(2) the increase in local revenues that the qualifying county, local school district and, if applicable, qualifying municipality are anticipated to receive as a result of the project;

(3) an allocation of the annual revenue deposited to the tax impact fund among the qualifying municipalities and counties and local school districts that have qualified to receive state in-lieu payments; and

(4) such adjustments as the department may determine by rule are appropriate and necessary to carry out the purposes of the Statewide Economic Development Finance Act, including, without limitation, adjustments that are necessary or desirable to:

(a) overcome particular barriers to economic expansion in specific locales;

(b) mitigate the tax impact of a project that will not be offset by increased local gross receipts revenue production directly or indirectly resulting from the project; or

(c) encourage job growth in an area in which unemployment is a particular problem.

Section 15. CUMULATIVE AUTHORITY.--The Statewide Economic Development Finance Act shall be deemed to provide an additional and alternative method for the accomplishment of the things authorized by that act, shall be interpreted as supplemental and additional to the powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds pursuant to the provisions of the Statewide Economic Development Finance Act need not comply with the requirement of any other law applicable to the issuance of bonds or notes.

Section 16. LIBERAL INTERPRETATION.--The Statewide Economic Development Finance Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

Section 17. Section 5-10-4 NMSA 1978 (being Laws 1993, Chapter 297, Section 4, as amended) is amended to read:

"5-10-4. ECONOMIC DEVELOPMENT PROJECTS--RESTRICTIONS ON PUBLIC EXPENDITURES OR PLEDGES OF CREDIT.--

A. No local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act or as otherwise permitted by law.

B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed five percent of the annual general fund expenditures of the local government in that fiscal year. The limits of this subsection shall not apply to:

(1) the value of any land or building contributed to any project pursuant to a project participation agreement;

(2) revenue generated through the imposition of the municipal infrastructure gross receipts tax pursuant to the Municipal Local Option Gross Receipts Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;

(3) revenue generated through the imposition of a county infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;

(4) the proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;

(5) the proceeds of a revenue bond issue to which county infrastructure gross receipts tax revenue is pledged; or

(6) funds donated by private entities to be used for defraying the cost of a project.

C. A regional or local government that generates revenue for economic development projects to which the limits of Subsection B of this section do not apply shall create an economic development fund into which such revenues shall be deposited. The economic development fund and income from the economic development fund shall be deposited as provided by law. Money in the economic development fund may be expended only as provided in the Local Economic Development Act or the Statewide Economic Development Finance Act."

Section 18. Section 7-19D-11 NMSA 1978 (being Laws 1991, Chapter 9, Section 3, as amended) is amended to read:

"7-19D-11. MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX--
AUTHORITY BY MUNICIPALITY TO IMPOSE--ORDINANCE REQUIREMENTS--
ELECTION.--

A. A majority of the members of 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. The rate of the tax shall not exceed one-fourth of one percent of the gross receipts of the person engaging in business and may be imposed in one-sixteenth of one percent increments by separate ordinances. Any ordinance enacting any increment of the first one-eighth of one percent of the tax is not subject to a referendum of any kind, notwithstanding any requirement of any charter municipality, except that an increment that is imposed after July 1, 1998 for economic development purposes set forth in Paragraph (5) of Subsection C of this section shall be subject to a referendum as provided in Subsection D of this section.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal infrastructure gross receipts tax".

C. The governing body of a municipality, at the time of enacting any ordinance imposing the rate of the tax authorized in Subsection A of this section, may dedicate the revenue for:

(1) payment of special obligation bonds issued pursuant to a revenue bond act;

(2) repair, replacement, construction or acquisition of infrastructure improvements, including sanitary sewer lines, storm sewers and other drainage improvements, water, water rights, water lines and utilities, streets, alleys, rights of way, easements, international ports of entry and land within the municipality or within the extraterritorial zone of the municipality;

(3) municipal general purposes;

(4) acquiring, constructing, extending, bettering, repairing or otherwise improving or operating or maintaining public transit systems or regional transit systems or authorities; and

(5) furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act, and use of not more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected for promotion and administration of or professional services contracts related to implementation of an economic development plan adopted by the governing body pursuant to the Local Economic Development Act and in accordance with law.

D. An ordinance imposing any increment of the municipal infrastructure gross receipts tax in excess of the first one-eighth of one percent or any increment imposed after July 1, 1998 for economic development purposes set forth in Paragraph (5) of Subsection C of this section shall not go into effect until after an election is held and a majority of the voters of the municipality voting in the election votes in favor of imposing the tax. 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 shall be submitted to the voters of the municipality as a separate question at a regular municipal election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code. If a majority of the voters voting on the question approves the ordinance imposing the municipal infrastructure gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the municipal infrastructure gross receipts tax fails, the governing body shall not again propose the imposition of any increment of the tax in excess of the first one-eighth of one percent for a period of one year from the date of the election."

Section 19. Section 7-20E-19 NMSA 1978 (being Laws 1998, Chapter 90, Section 7) is amended to read:

"7-20E-19. COUNTY INFRASTRUCTURE GROSS RECEIPTS TAX--
AUTHORITY TO IMPOSE RATE--USE OF FUNDS--ELECTION.--

A. The majority of the members of the governing body of a county may enact an ordinance imposing an excise tax at a rate not to exceed one-eighth of one percent of the gross receipts of any person engaging in business in the county area for the privilege of engaging in business. The tax may be imposed in increments of one-sixteenth of one percent not to exceed an aggregate rate of one-eighth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "county infrastructure gross receipts tax".

C. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A of this section, may dedicate the revenue for:

- (1) county general purposes;
- (2) payment of gross receipts tax revenue bonds issued pursuant to Chapter 4, Article 62 NMSA 1978;
- (3) repair, replacement, construction or acquisition of any county infrastructure improvements;
- (4) acquisition, construction, operation or maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities;
- (5) acquiring, constructing, extending, bettering, repairing or otherwise improving or operating or maintaining public transit systems or regional transit systems or authorities;
- (6) planning, design, construction, equipping, maintenance or operation of a county jail or juvenile detention facility; planning, assessment, design or operation of a regional system of juvenile services, including secure detention and nonsecure alternatives, that serves multiple contiguous counties; planning, design, construction, maintenance or operation of multipurpose regional adult jails or juvenile detention facilities; housing of county prisoners or juvenile offenders in any county jail or detention facility; or substance abuse, mental health or other programs for county prisoners or other inmates in county jails or for juvenile offenders in county or regional detention facilities; and
- (7) furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act, and use of not more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected for promotion and administration of or professional services contracts related to implementation of an economic development plan adopted by the governing body pursuant to the Local Economic Development Act and in accordance with law.

D. An ordinance imposing the county infrastructure gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the county area voting in the election votes in favor of imposing the tax. 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 shall be submitted to the voters of the county area as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves

the ordinance imposing the county infrastructure gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county infrastructure gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election."

Section 20. Section 7-36-3 NMSA 1978 (being Laws 1975, Chapter 218, Section 1, as amended) is amended to read:

"7-36-3. INDUSTRIAL REVENUE BOND, POLLUTION CONTROL BOND AND ECONOMIC DEVELOPMENT BOND PROJECT PROPERTY--TAX STATUS.--

A. Property interests of a lessee in project property held under a lease from a county or a municipality under authority of an industrial revenue bond or pollution control revenue bond act or the Statewide Economic Development Finance Act are exempt from property taxation for as long as there is an outstanding bonded indebtedness under the terms of the revenue bonds issued for the acquisition of the project property, but in no event for a period of more than thirty years from the date of execution of the first lease of the project to the lessee by the county or municipality.

B. Property interests of a person, other than a public utility, arising out of the purchase of a project authorized by the Industrial Revenue Bond Act, the County Industrial Revenue Bond Act, the Pollution Control Revenue Bond Act or the Statewide Economic Development Finance Act are exempt from property taxation for as long as the project purchaser remains liable to the project seller for any part of the purchase price, but not to exceed thirty years from the date of execution of the sale agreement.

C. The exemptions from property taxation under Subsections A and B of this section are not cumulative."

Section 21. Section 13-6-2 NMSA 1978 (being Laws 1979, Chapter 195, Section 3, as amended by Laws 2001, Chapter 291, Section 9 and also by Laws 2001, Chapter 317, Section 2) is amended to read:

"13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL PUBLIC BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--APPROVAL OF APPROPRIATE APPROVAL AUTHORITY.--

A. Providing a written determination has been made, a state agency, local public body, school district or state educational institution may sell or otherwise dispose of real or tangible personal property belonging to the state agency, local public body, school district or state educational institution. Disposal of real or tangible personal property under this section shall be by negotiated sale or donation to an Indian nation, tribe or pueblo in New Mexico or by negotiated sale or donation to other state agencies, local public bodies, school districts or state educational institutions or through the

central purchasing office of the governmental entity by means of competitive sealed bids or public auction or, if a state agency, through the federal property assistance bureau of the general services department.

B. A state agency shall give the federal property assistance bureau of the general services department the right of first refusal to dispose of tangible personal property of the state agency. A school district may give the department the right of first refusal to dispose of tangible personal property of the school district.

C. Except as provided in Section 13-6-2.1 NMSA 1978 requiring state board of finance approval for certain transactions, sale or disposition of real or tangible personal property having a current resale value of more than five thousand dollars (\$5,000) may be made by a state agency, local public body, school district or state educational institution if the sale or disposition has been approved by the state budget division of the department of finance and administration for state agencies, the local government division of the department of finance and administration for local public bodies, the state department of public education for school districts and the commission on higher education for state educational institutions.

D. Prior approval of the appropriate approval authority is not required if the property is to be used as a trade-in or exchange pursuant to the provisions of the Procurement Code.

E. The appropriate approval authority may condition the approval of the sale or other disposition of real or tangible personal property upon the property being offered for sale or donation to a state agency, local public body, school district or state educational institution.

F. The appropriate approval authority may credit a payment received from the sale of such real or tangible personal property to the governmental body making the sale. The state agency, local public body, school district or state educational institution may convey all or any interest in the real or tangible personal property without warranty.

G. This section shall not apply to:

- (1) computer software of a state agency;
- (2) those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico;
- (3) the New Mexico state police division of the department of public safety;
- (4) the state land office or the state highway and transportation department;

(5) property acquired by a museum through abandonment procedures pursuant to the Abandoned Cultural Properties Act;

(6) leases of county hospitals with any person pursuant to the Hospital Funding Act; and

(7) property acquired by the economic development department pursuant to the Statewide Economic Development Finance Act."

Section 22. Section 13-6-2.1 NMSA 1978 (being Laws 1989, Chapter 380, Section 1, as amended) is amended to read:

"13-6-2.1. SALES, TRADES OR LEASES--BOARD OF FINANCE APPROVAL.--

A. Except as provided in Section 13-6-3 NMSA 1978, for state agencies, any sale, trade or lease for a period of more than five years of real property belonging to a state agency, local public body or school district or any sale, trade or lease of such real property for a consideration of more than twenty-five thousand dollars (\$25,000) shall not be valid unless it is approved prior to its effective date by the state board of finance.

B. The provisions of this section shall not be applicable as to those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico, the state land office, the state transportation commission or the economic development department when disposing of property acquired pursuant to the Statewide Economic Development Finance Act."

Section 23. Section 13-6-3 NMSA 1978 (being Laws 1961, Chapter 41, Section 1, as amended) is amended to read:

"13-6-3. SALE, TRADE OR LEASE OF REAL PROPERTY BY STATE AGENCIES--APPROVAL OF LEGISLATURE--EXCEPTIONS.--

A. Any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to any state agency, which sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$100,000) or more, shall be subject to the ratification and approval of the state legislature prior to the sale, trade or lease becoming effective. The provision specified in Section 13-6-2 NMSA 1978 requiring approval of the state budget division of the department of finance and administration as a prerequisite to consummating such sales or dispositions of realty shall not be applicable in instances wherein the consideration for the sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$100,000) or more and wherein a state agency not specifically excepted by Subsection B of this section is a contracting party, and, in every such instance, the legislature shall specify its approval prior to the sale, trade or lease becoming effective.

B. The provisions of this section shall not be applicable as to those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico, the state land office, the state transportation commission or the economic development department when disposing of property acquired pursuant to the Statewide Economic Development Finance Act."

Section 24. Section 15-3B-2 NMSA 1978 (being Laws 1972, Chapter 74, Section 2, as amended) is amended to read:

"15-3B-2. DEFINITIONS.--As used in the Property Control Act:

A. "capital outlay project" means the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including land, buildings, machinery, furniture and equipment. A "capital outlay project" includes all proposed expenditures related to the entire undertaking;

B. "department" means the general services department;

C. "director" means the director of the division;

D. "division" means the property control division of the department;

E. "jurisdiction" means all state buildings and land except those under the control and management of the state armory board, the office of cultural affairs, the state fair commission, the department of game and fish, the state highway and transportation department, the commissioner of public lands, the state parks division of the energy, minerals and natural resources department, the state institutions of higher learning, the New Mexico school for the deaf, the New Mexico school for the visually handicapped, the judicial branch, the legislative branch and property acquired by the economic development department pursuant to the Statewide Economic Development Finance Act; and

F. "secretary" means the secretary of general services."

SENATE BILL 932, AS AMENDED

CHAPTER 350

CHAPTER 350, LAWS 2003

AN ACT

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR RECEIPTS OF CERTAIN CLINICAL LABORATORIES AND HOME HEALTH AGENCIES FROM THE PROVISION OF CERTAIN SERVICES TO MEDICARE BENEFICIARIES.

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

Section 1. Section 7-9-77.1 NMSA 1978 (being Laws 1998, Chapter 96, Section 1, as amended) is amended to read:

"7-9-77.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN MEDICAL AND HEALTH CARE SERVICES.--

A. Receipts from payments by the United States government or any agency thereof for provision of medical and other health services by medical doctors and osteopathic physicians or of medical, other health and palliative services by a hospice to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

B. Receipts from payments by the United States government or any agency thereof for medical services provided by a clinical laboratory to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts pursuant to the following schedule:

(1) from July 1, 2003 through June 30, 2004 thirty-three and one-third percent of the receipts may be deducted;

(2) from July 1, 2004 through June 30, 2005 sixty-six and two-thirds percent of the receipts may be deducted; and

(3) after June 30, 2005 one hundred percent of the receipts may be deducted.

C. Receipts from payments by the United States government or any agency thereof for medical, other health and palliative services provided by a home health agency to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts pursuant to the following schedule:

(1) from July 1, 2003 through June 30, 2004 thirty-three and one-third percent of the receipts may be deducted;

(2) from July 1, 2004 through June 30, 2005 sixty-six and two-thirds percent of the receipts may be deducted; and

(3) after June 30, 2005 one hundred percent of the receipts may be deducted.

D. For the purposes of this section:

(1) "clinical laboratory" means a laboratory accredited pursuant to 42 USCA 263a;

(2) "home health agency" means a for-profit entity that is licensed by the department of health and certified by the federal centers for medicare and medicaid services as a home health agency;

(3) "hospice" means a for-profit entity licensed and certified by the department of health as a hospice; and

(4) "medical doctors and osteopathic physicians" means persons licensed to practice under Section 61-6-11, 61-6-13, 61-10-11 or 61-10-12 NMSA 1978."

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILLS 213 AND 702

CHAPTER 351

CHAPTER 351, LAWS 2003

AN ACT

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR PAYMENTS RECEIVED FOR MEDICAL AND HEALTH SERVICES PROVIDED BY PODIATRISTS OR PROVIDED TO BENEFICIARIES UNDER THE TRICARE PROGRAM.

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

Section 1. Section 7-9-77.1 NMSA 1978 (being Laws 1998, Chapter 96, Section 1, as amended) is amended to read:

"7-9-77.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN MEDICAL AND HEALTH CARE SERVICES.--

A. Receipts from payments by the United States government or any agency thereof for provision of medical, other health services by medical doctors and osteopathic physicians and podiatrists or of medical, other health and palliative services by a hospice to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

B. Receipts from payments by a third-party administrator of the federal TRICARE program for provision of medical and other health services by medical doctors and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

C. For the purposes of this section:

(1) "hospice" means a for-profit entity licensed and certified by the department of health as a hospice;

(2) "medical doctor" means a person licensed as a physician to practice medicine pursuant to the provisions of the Medical Practice Act;

(3) "osteopathic physician" means a person licensed as an osteopathic physician pursuant to the provisions of Chapter 61, Article 10 NMSA 1978;

(4) "podiatrist" means a person licensed as a podiatrist pursuant to the provisions of the Podiatry Act; and

(5) "TRICARE program" means the program defined in 10 U.S.C. 1072(7)."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 654, AS AMENDED

CHAPTER 352

CHAPTER 352, LAWS 2003

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; CHANGING CERTAIN PROVISIONS OF THE DEVELOPMENT TRAINING PROGRAM TO PERMIT USE OF TRAINING FUNDS FOR PART-TIME EMPLOYEES AND TO PROVIDE FOR TRAINING FUNDS FOR FULL-TIME-EQUIVALENT POSITIONS.

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

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, and 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 for the administration of appropriated funds and shall provide review and oversight to ensure 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 training programs;

(6) provide for training by educational institutions or by a company through in-plant training, at that 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 be provided 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) payment shall be made for up to one thousand forty hours of training per full-time-equivalent position; provided that no more than ten percent of the payments are for part-time positions;

(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; provided, however, that prior to July 1, 2004, the residency requirements may be waived in part for a project within a New Mexico community located within fifty miles of the state border if the project meets the following criteria:

(a) the project will employ more than one thousand five hundred employees;

(b) the resident labor force within a fifty-mile radius of the project location is not sufficient to fill the full-time-equivalent position requirements of the project as determined by the labor department;

(c) preference for training shall be given to New Mexico residents; and

(d) no less than fifty percent of the project's work force shall be residents of New Mexico;

(3) payment for institutional classroom training shall be made pursuant to an accepted training contract for a qualified training program;

(4) payment shall not be made pursuant to an 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 of 1938, as amended, and shall not have terminated a public school program within the past three months except by graduation;

(6) trainees shall be guaranteed 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) payment shall not 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."

HOUSE BILL 24, AS AMENDED

CHAPTER 353

CHAPTER 353, LAWS 2003

AN ACT

RELATING TO DEVELOPMENT TRAINING; ALLOWING FILM AND MULTIMEDIA PRODUCTION COMPANIES TO QUALIFY FOR IN-PLANT TRAINING FUNDS; PROVIDING FOR AN APPROVAL PROCESS FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES.

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

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, non-retail service sector businesses in New Mexico and film and multimedia production companies that have business or production procedures that require skills unique to those industries. Training shall be custom designed for, and 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 for the administration of appropriated funds and shall provide review and oversight to assure that funds expended from the development training fund 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 a company through in-plant training, at that 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 be provided and the review of training program implementation.

F. Except as provided in Section 21-19-7.1 NMSA 1978 for film and multimedia production companies, 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; provided, however, that prior to July 1, 2004 the residency requirements may be waived in part for projects within New Mexico communities located within fifty miles of the state border if the project meets the following criteria:

(a) the project will employ more than one thousand five hundred employees;

(b) the resident labor force within a fifty-mile radius of the project location is not sufficient to fill the full-time-equivalent position requirements of the project as determined by the labor department;

(c) preference for training shall be given to New Mexico residents; and

(d) no less than fifty percent of the project's work force shall be residents of New Mexico;

(3) payment for institutional classroom training shall be made pursuant to any accepted training contract for a qualified training program;

(4) no payment shall be made pursuant to 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 of 1938, as amended, 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. A new Section 21-19-7.1 NMSA 1978 is enacted to read:

"21-19-7.1. DEVELOPMENT TRAINING FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES.--After consulting with the New Mexico film division of the economic development department, the industrial training board shall promulgate rules for development funding for film and multimedia production companies. The rules shall provide:

A. for preapproval by the New Mexico film division of personnel who:

(1) are New Mexico residents;

(2) have attended a training course sponsored in part by an accredited educational institution in New Mexico, the labor department or the New Mexico film division; and

(3) have been certified as a film and multimedia trainee by the New Mexico film division;

B. for submission to the economic development division of the economic development department by a film or multimedia production company, after completing production in New Mexico, of employment, salary and related information concerning those personnel who have been:

(1) approved by the New Mexico film division pursuant to Subsection A of this section; and

(2) employed by the production company in a film or multimedia production in New Mexico;

C. after approval by the economic development division, for reimbursement from the development training fund to the production company of fifty percent of the salaries paid to the personnel for whom information is submitted pursuant to Subsection B of this section; and

D. that the reimbursement shall be made by the economic development division without further action or approval of the industrial training board."

Section 3. TEMPORARY PROVISION.--Up to one million dollars (\$1,000,000) of the balances of the development training fund may be expended in fiscal year 2004 to reimburse film and multimedia production companies pursuant to the provisions of Section 21-19-7.1 NMSA 1978 and up to twenty-five thousand dollars (\$25,000) of the balances of the fund may be expended in fiscal year 2004 for costs incurred in administering the provisions of Section 21-19-7.1 NMSA 1978.

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 919, AS AMENDED

CHAPTER 354

CHAPTER 354, LAWS 2003

AN ACT

RELATING TO ELECTIONS; ALLOWING EARLY PROCESSING OF ABSENTEE BALLOT OFFICIAL MAILING ENVELOPES.

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

Section 1. Section 1-6-14 NMSA 1978 (being Laws 1971, Chapter 317, Section 11, as amended) is amended to read:

"1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER PRECINCT BOARDS.--

A. Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

B. If the voter's signature is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The election clerks shall enter the voter's name in the signature rosters and shall write the notation "Rejected--Missing Signature" in the "Notations" column of the signature rosters. The presiding judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. The accredited challengers may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the absent voter precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector, overseas citizen voter or voter as provided in the Election Code.

Upon the challenge of an absentee ballot, the election judges and the presiding election judge shall follow the same procedure as when ballots are challenged when a person attempts to vote in person. If a challenge is upheld, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

D. If the official mailing envelopes have been properly subscribed and the voters have not been challenged:

(1) the election judges shall open the official mailing envelopes and deposit the ballots in their still-sealed official inner envelopes in the locked ballot box; and

(2) the election clerks shall enter the absent voter's name and residence address as shown on the official mailing envelope in the signature rosters and shall mark the notation "AB" opposite the voter's name in the "Notations" column of the signature rosters.

E. Prior to the closing of the polls, the election judges and the presiding election judge may either remove the absentee ballots from the official inner envelopes and count and tally the results of absentee balloting or, under the personal supervision of the presiding election judge and one election judge from each party, count and tally the absentee ballots on an electronic voting machine the same as if the absent voter had been present and voted in person. It is unlawful for any person to disclose the

results of a count and tally or the registration on a voting machine of absentee ballots prior to the closing of the polls.

F. Absentee ballots shall be counted and tallied on an electronic voting machine as provided in the Election Code.

G. Absent voter precinct polls shall close at the time prescribed by the Election Code for other polling places, and the results of the election shall be certified as prescribed by the secretary of state.

H. The county clerk may convene the absent voter precinct board no more than three days before the day of the election to alphabetize, enter on the roster and sort the absentee ballots by legislative district; provided that a member of the absent voter precinct board shall not open an official inner envelope or count and canvass any absentee ballot prior to the day of the election."

HOUSE BILL 409

CHAPTER 355

CHAPTER 355, LAWS 2003

AN ACT

RELATING TO ELECTIONS; ELIMINATING CERTAIN RESTRICTIONS ON ABSENT UNIFORMED SERVICE VOTERS AND OVERSEAS VOTERS; ALLOWING ELECTRONIC TRANSMISSION FOR VOTER REGISTRATION AND REQUESTS FOR AND VOTING BY ABSENTEE BALLOTS BY FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS.

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

Section 1. A new section of the Election Code is enacted to read:

"WRITE-IN ABSENTEE BALLOTS--FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS.--

A. A federal qualified elector or overseas voter residing outside the United States may request a special write-in federal or state absentee ballot, as appropriate, if:

(1) the person submits with the request a statement that due to military or other contingencies that preclude normal delivery of mail, the person cannot vote on an absentee ballot during the normal absentee voting period; and

(2) the request is made between ninety and one hundred eighty days before the election.

B. The county clerk shall determine the type of write-in absentee ballot for which the voter is eligible and send the ballot to the voter if the conditions of Paragraphs (1) and (2) of Subsection A of this section are met."

Section 2. Section 1-4-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 66, as amended) is amended to read:

"1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF REGISTRATION--CLOSE OF REGISTRATION--FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS--LATE REGISTRATION.--

A. For qualified electors other than federal qualified electors or overseas voters, the following provisions shall apply:

(1) the county clerk shall receive certificates of registration at all times during normal working hours, except that he shall close registration at 5:00 p.m. on the twenty-eighth day immediately preceding any election at which the registration books are to be furnished to the precinct board;

(2) registration shall be reopened on the Monday following the election;

(3) for purposes of a municipal or school election, the registration period for those precincts within the municipality or school district is closed at 5:00 p.m. on the twenty-eighth day immediately preceding the municipal or school election and is opened again on the Monday following the election;

(4) during the period when registration is closed, the county clerk shall receive certificates of registration and other documents pertaining thereto but shall not file the certificate of registration in the registration book until the Monday following the election, at which time a voter identification card shall be mailed to the registrant at the address shown on the certificate of registration;

(5) when the twenty-eighth day prior to any election referred to in this section is a Saturday, Sunday or legal holiday, registration shall be closed at 5:00 p.m. of the next succeeding regular business day for the office of the county clerk; and

(6) the county clerk shall accept for filing any certificate of registration that is hand delivered before 5:00 p.m. on the Friday immediately following the close of registration. The county clerk shall accept for filing any mailed certificate of registration postmarked not less than twenty-eight days prior to any election referred to in this section. The county clerk shall accept for filing any certificate of registration

accepted at a state agency designated pursuant to Section 1-4-5.2 NMSA 1978 not later than twenty-eight days prior to any election.

B. For federal qualified electors and overseas voters, the county clerk shall accept a certificate of registration by electronic transmission from a voter qualified to apply for and vote by absentee ballot in the county if the transmission is received before 5:00 p.m. on the Friday immediately preceding the election."

Section 3. Section 1-6-4.1 NMSA 1978 (being Laws 1987, Chapter 327, Section 9, as amended) is amended to read:

"1-6-4.1. FEDERAL AND STATE WRITE-IN ABSENTEE BALLOT FOR OVERSEAS VOTERS IN GENERAL ELECTIONS FOR STATE OR FEDERAL OFFICES.--

A. Except as provided in Subsection C of this section, a federal or state write-in absentee ballot for federal or state offices in a general election shall be processed in the same manner as provided by law for other absentee ballots.

B. In completing the ballot, the overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for all candidates of that political party for federal or state office. Any abbreviation, misspelling or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot if the intention of the overseas voter can be ascertained.

C. A federal or state write-in absentee ballot of an overseas voter shall not be counted if:

(1) the ballot is submitted from any location in the United States;

(2) the application of the overseas voter for an absentee ballot is received by the county clerk less than thirty days before the election unless the application is electronically transmitted to the clerk; or

(3) the absentee ballot of the overseas voter is received by the county clerk later than 7:00 p.m. on election day.

D. A federal qualified elector or overseas voter may transmit, and the county clerk shall accept, an absentee ballot by electronic transmission if:

(1) the voter signs an affidavit waiving the right of secrecy of voter's ballot;

(2) the voter transmits the affidavit with the absentee ballot; and

(3) the transmission of the absentee ballot and affidavit are received by the county clerk no later than 7:00 p.m. on election day."

Section 4. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended by Laws 2001, Chapter 49, Section 1 and by Laws 2001, Chapter 58, Section 1) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--MARKING AND DELIVERY OF BALLOT IN PERSON.--

A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant has no valid certificate of registration on file in the county and he is not a federal qualified elector or if the applicant states he is a federal qualified elector but his application indicates he is not a federal qualified elector, no absentee ballot shall be issued and the county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. The county clerk shall notify in writing each applicant of the fact of acceptance or rejection of his application and, if rejected, shall explain why the application was rejected.

D. If the county clerk finds that the applicant is a voter or a federal qualified elector, the county clerk shall mark the application "accepted" and deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. No absent voter shall be permitted to change his party affiliation during those periods when change of party affiliation is prohibited by the Election Code. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter who has been provided or mailed an absentee ballot.

E. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall provide the voter an absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the voter leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot

and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code other than is provided in this subsection. It shall be unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office. Absentee ballots may be marked in person during the regular hours and days of business at the county clerk's office from 8:00 a.m. on the fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter may be assisted by one person of the voter's choice.

F. Commencing with the twentieth day prior to an election, an absent voter may vote in person, on an electronic voting machine at the county clerk's office or at an alternate location established by the county clerk; provided, a county clerk may allow an absent voter to vote on an electronic voting machine beginning on the fortieth day before an election. In class A counties, the county clerk shall establish not less than four alternate locations as a convenience to the voters. Absentee voting may be done at the county clerk's office or an alternate location during the regular hours of business from 8:00 a.m. on the twentieth day prior to the election until 5:00 p.m. on the Saturday immediately prior to the election. The county clerk shall ensure that procedures established for processing an absent voter application and for voting by absentee ballot are complied with at each alternate location.

G. Absentee ballots shall be airmailed or, if so requested, electronically transmitted to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Friday immediately prior to the date of the election.

H. No absentee ballot shall be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

I. The secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting."

Section 5. Section 1-6-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 133, as amended) is amended to read:

"1-6-7. FORM OF ABSENTEE BALLOT.--As soon as candidates and questions to be voted upon have been determined for each election, the county clerk shall procure a supply of suitable absentee ballots. The absentee ballots shall be numbered and shall be, as nearly as possible, in the same form as prescribed by the secretary of state for emergency ballots. 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 possible. Absentee ballots shall be printed at least forty-five days prior to the date of a primary election and forty-nine days prior to the date of a general election. Absentee ballots for any other election shall be printed at least thirty-five days prior to the date of the election."

Section 6. Section 1-6-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 135, as amended) is amended to read:

"1-6-9. MANNER OF VOTING.--

A. A person voting pursuant to the Absent Voter Act shall secretly mark his absentee ballot in the manner provided in the Election Code for marking emergency paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall 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, which shall include an affirmation by the voter under penalty of perjury that the facts stated in the form are true.

B. Federal qualified electors and overseas voters shall either deliver or mail the official mailing envelope or electronically transmit the absentee ballot to the county clerk of their county of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the county clerk of the county of residence or former residence as the case may be. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence."

HOUSE BILL 702, AS AMENDED

CHAPTER 356

CHAPTER 356, LAWS 2003

AN ACT

RELATING TO ELECTIONS; CONFORMING THE ELECTION CODE TO THE REQUIREMENTS OF THE FEDERAL HELP AMERICA VOTE ACT OF 2002; PROVIDING FOR SECURITY OF VOTERS' PERSONAL INFORMATION DURING REGISTRATION; PRESCRIBING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of Chapter 1, Article 1 NMSA 1978 is enacted to read:

"ELECTION CYCLE.--As used in the Election Code, "election cycle" means the period between the beginning of a general election and the end of the following general election."

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

"CONDUCT OF ELECTIONS--VOTER INFORMATION.--The secretary of state shall issue rules describing the voter information the county clerks shall display, in accordance with the federal Help America Vote Act of 2002, in each polling place on election day and in each county clerk's office and alternate location where absentee or early voting is taking place."

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

"CONDUCT OF ELECTION--PROVISIONAL VOTING--INFORMATION TO VOTER--STATUS OF VOTER'S BALLOT.--

A. If a voter is required to vote on a provisional paper ballot, the election judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted.

B. The county clerk shall establish a free access system, such as a toll-free telephone number or internet web site, that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted and, if the vote was not counted, the reason it was not counted. Access to information about an individual voter's provisional ballot is restricted to the voter who cast the ballot."

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

"CONDUCT OF ELECTION--PROVISIONAL PAPER BALLOTS--USE WHEN POLLING HOURS EXTENDED--DISPOSITION.--

A. If polling hours are extended by court order or any other order pursuant to a state law in effect at least ten days before the date of that election, during the extended hours, a voter shall vote only on a provisional paper ballot.

B. A provisional paper ballot cast pursuant to this section shall be separated and held apart from provisional paper ballots cast by those not affected by the order. The ballot shall be counted if:

(1) there is no legal challenge to the order extending polling hours within ten days of the election; or

(2) a legal challenge to the order extending polling hours is not sustained."

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

"ADMINISTRATIVE COMPLAINTS--PROCEDURES.--

A. The secretary of state shall adopt rules for an administrative procedure for hearing complaints on violations of the provisions of Title III of the federal Help America Vote Act of 2002, including provisions related to voting system standards, provisional voting procedures, voter registration procedures and operational standards of the statewide voter registration system.

B. A person who determines that there is a violation or that a violation is about to occur pursuant to this section may file a complaint with the secretary of state. Complaints may be consolidated by the secretary.

C. Complaints shall be in writing, signed and sworn by the person filing the complaint and notarized.

D. The hearing shall be on the record if the complainant requests.

E. If the hearing officer determines that there is a violation, an appropriate remedy shall be provided. If there is no violation, the complaint shall be dismissed and the results of the hearing made available to the public.

F. A final decision shall be made within ninety days of the filing of the complaint unless the complainant consents to extending the deadline. If the deadline is not met, the complaint shall be resolved within sixty days through alternative dispute resolution procedures established pursuant to the Governmental Dispute Resolution Act. Records and materials from the hearing shall be available for use in an alternative dispute resolution procedure."

Section 6. A new section of the Election Code is enacted to read:

"PROVISIONAL PAPER BALLOTS--REQUIRED INFORMATION.--

A. At a minimum, the following information shall be printed on the outer envelope for a provisional paper ballot:

- (1) the name and signature of the voter;
- (2) the voter's registered address, both present and former if applicable;
- (3) the voter's date of birth;
- (4) the reason for using the ballot;
- (5) the precinct and the polling place at which the voter has voted;
- (6) the voter's social security number; and

(7) sufficient space to list the disposition of the ballot after review by the county clerk.

B. A provisional paper ballot shall not be rejected for lack of the information required by this section as long as the voter provides a valid signature and sufficient information to determine eligibility."

Section 7. A new section of the Election Code is enacted to read:

"PROVISIONAL PAPER BALLOTS--DISPOSITION.--

A. Upon closing of the polls, provisional paper ballots shall be delivered to the county clerk, who shall determine if the ballots will be counted prior to certification of the election.

B. A provisional paper ballot shall not be counted if the registered voter did not sign either the signature roster or the ballot's envelope.

C. If there is no record of the voter ever having been registered in the county, the voter shall be offered the opportunity to register and the provisional paper ballot shall not be counted.

D. If the voter was registered in the county, the registration was later canceled and the county clerk determines that the cancellation was in error, the voter's registration shall be immediately restored and the provisional paper ballot counted.

E. If the county clerk determines that the cancellation was not in error, the voter shall be offered the opportunity to register at the voter's correct address, and the provisional paper ballot shall not be counted.

F. If the voter is a registered voter in the county, but has voted on a provisional paper ballot at a polling place other than the voter's designated polling place, the county canvassing board shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted.

G. If the county clerk finds that the voter who voted on a provisional paper ballot at the polls has also voted an absentee ballot in that election, the provisional paper ballot shall not be counted.

H. The county canvassing board shall prepare a tally displaying the number of provisional paper ballots received, the number found valid and counted, the number rejected and not counted and the reason for not counting the ballots as part of the canvassing process and forward it to the secretary of state immediately upon certification of the election.

I. The secretary of state shall issue rules to ensure securing the secrecy of the provisional paper ballots and protecting against fraud in the voting process."

Section 8. A new section of the Election Code is enacted to read:

"ABSENTEE BALLOTS--OVERSEAS VOTERS--REPORTS.--

A. Within thirty days following a general election, the county clerk shall report to the secretary of state the number of absentee ballots transmitted to overseas voters and federal qualified electors for the election and the number of those ballots returned, rejected or counted.

B. Within ninety days following a general election, the secretary of state shall report to the federal election assistance commission the combined absentee ballot numbers submitted by the counties pursuant to this section."

Section 9. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"DEFINITION OF A VOTE.--

A. A vote on a touch-screen direct recording electronic voting system or electronic voting system consists of a voter's selection of a candidate or answer to a ballot question selected by the electro-optical ballot display of the device, followed by the voter activating the cast vote indicator.

B. A vote on a paper ballot card used on an electronic vote tabulating marksense voting system, optical scan vote tabulating system or high-speed central count marksense vote tabulator consists of a voter's selection of a candidate or answer to a ballot question indicated in the voting response area of the paper ballot card marked in accordance with the instructions for that ballot type. If the paper ballot card is marked indistinctly or not marked according to the instructions for that ballot type, only a cross (X) or a check () within the voting response area shall be counted. A vote on a paper ballot card shall also be counted if, on a ballot type requiring the completion of an arrow to indicate a voter's selection, the voter has marked an arrowhead on the tail portion of the arrow in the voting response area."

Section 10. Section 1-4-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 63, as amended by Laws 1993, Chapter 314, Section 6 and also by Laws 1993, Chapter 316, Section 6) is amended to read:

"1-4-5. METHOD OF REGISTRATION--UNLAWFUL USE OF INFORMATION--PENALTY.--

A. A qualified elector may apply to a registration officer for registration.

B. The registration officer shall fill out each of the blanks on the original and the voter's copy of the certificate of registration by typing or printing in ink. Carbon paper may be used between the original and the voter's copy.

C. The qualified elector shall subscribe a certificate of registration as follows:

(1) a person shall sign his original certificate of registration using his given name, middle name or initial and last name; or

(2) if any qualified elector seeking to register is unable to read and write either the English or Spanish language or is unable to read or write because of some physical disability, the certificate of such person shall be filled out by a registration officer and the name of the qualified elector so registering shall be subscribed by the making of his mark.

D. When properly executed by the registration officer, the original and the voter's copy of the certificate of registration shall be presented, either in person or by mail by the qualified elector or by the registration officer, to the county clerk of the county in which the qualified elector resides.

E. Only when the certificate of registration is properly filled out, subscribed 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 shall it constitute an official public record of the registration of the qualified elector. It is unlawful for any information required on the certificate of registration to be copied, conveyed or used by anyone other than the person registering to vote, either before or after it is filed with the county clerk, except by elections administrators for purposes of the registration process.

F. A person who unlawfully copies, conveys or uses information from a certificate of registration is guilty of a fourth degree felony."

Section 11. Section 1-4-5.1 NMSA 1978 (being Laws 1993, Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7, as amended) 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 form 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. The form shall also include:

(1) the question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen;

(2) the question "Will you be at least eighteen years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be eighteen years of age or older on election day;

(3) the statement "If you checked 'no' in response to either of these questions, do not complete this form."; and

(4) a statement informing the applicant that:

(a) if the form is not submitted in person by the applicant and the applicant is registering for the first time in New Mexico, the applicant must submit with the form a copy of a current and valid photo identification, utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the applicant; and

(b) if the applicant does not submit the required identification, he will be required to do so when he votes in person or absentee."

Section 12. Section 1-4-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 67, as amended) is amended to read:

"1-4-11. DUTIES OF COUNTY CLERK--UPON RECEIPT OF CERTIFICATES.--

A. Upon receipt of a complete certificate of registration, if in proper form, the county clerk shall determine if the qualified elector applying for registration is already registered in the registration records of the county. If the qualified elector is not already registered in the county and if the certificate of registration is received within the time allowed by law for filing certificates of registration in the county clerk's office, the county clerk shall sign or stamp, in the space provided therefor on each copy of the certificate, his name and the date the certificate was accepted for filing in the county registration records. A voter identification card shall be handed or mailed to the voter and to no other person.

B. If the qualified elector is already registered in the county as shown by his original certificate of registration currently on file in the county registration records, the county clerk shall not accept the new certificate of registration unless it is filed pursuant to Section 1-4-13, 1-4-15, 1-4-17 or 1-4-18 NMSA 1978. He shall stamp or write the word "rejected" on the new certificate of registration and hand or mail it to the voter with an explanation why the new certificate of registration was rejected and what remedial action, if any, the voter must take to bring his registration up to date.

C. If the qualified elector does not register in person, indicates that he has not previously voted in a general election in New Mexico and does not provide the registration officer with the required identification, the registration officer shall indicate this on the voter's certificate of registration and the county clerk shall note this on the appropriate precinct signature roster."

Section 13. Section 1-4-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 68, as amended) is amended to read:

"1-4-12. DUTIES OF COUNTY CLERK--FILING OF CERTIFICATES.--

A. Certificates of registration, if in proper form, shall be processed and filed by the county clerk as follows:

(1) a voter identification card shall be delivered or mailed to the voter; and

(2) the original certificate shall be filed alphabetically by surname and inserted into the county register pursuant to Section 1-5-5 NMSA 1978.

B. The county clerk shall, on Monday of each week, process all certificates of registration that are in proper form and that were received in his office up to 5:00 p.m. on the preceding Friday.

C. The contents of certificates of registration, except for the voter's social security number and date of birth, are public records."

Section 14. Section 1-4-48 NMSA 1978 (being Laws 1995, Chapter 198, Section 13) is amended to read:

"1-4-48. AGENCY REGISTRATION.--

A. The secretary of state shall adopt and publish in accordance with the State Rules Act rules for the administration of a state-agency-based voter registration program. The rules shall provide for distribution of voter registration forms, provisions for the acceptance of voter registration forms and procedures for reporting voter registration activity in accordance with the federal National Voter Registration Act of 1993.

B. Voter registration shall be made available at all state agencies providing public assistance or services to people with disabilities. The secretary of state may, with the agreement of those offices, designate other state and local public offices to provide voter registration services.

C. Each state agency participating in the voter registration program shall maintain sufficient records for the secretary of state to comply with federal voter registration reporting requirements and the federal Help America Vote Act of 2002. Any records maintained by a state agency regarding voter registration activities in that agency are confidential and shall not be released as public records.

D. Any voter registration made or accepted at a state agency pursuant to this section shall be transmitted to the appropriate registration officer within ten calendar days.

E. A state agency employee or agency contractor who participates in the voter registration process may not intentionally influence the prospective registrant in the selection of political party, or independent status, by word or act. A state agency employee or agency contractor who participates in the voter registration process may not reveal the existence of or the nature of the voter registration to anyone other than a registration officer."

Section 15. Section 1-5-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 112, as amended) is amended to read:

"1-5-10. VOTER LISTS--SIGNATURE ROSTERS--USE DURING ELECTION.--

A. Each precinct board using voter lists shall post securely at or near the entrance of the polling place one copy of the voter list for use of the voters prior to voting. The posted copy shall not contain a listing of voter social security numbers.

B. The presiding judge of the precinct board shall assign one judge of the board to be in charge of one copy of the voter list, which shall be used to confirm the registration and voting of each person offering to vote.

C. The presiding judge of the precinct board shall assign one election clerk to be in charge of the signature roster.

D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list.

E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot.

F. The election judge shall follow the procedures provided for in Sections 1-5-12 and 1-12-8 NMSA 1978 if a person whose name does not appear on the signature list requests to vote or a person is required to vote on a provisional paper ballot.

G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster.

H. After the poll is closed, the election clerk in charge of a signature roster shall draw a single horizontal line in ink through each signature space in the signature roster where no signature or mark appears."

Section 16. Section 1-5-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 114, as amended) is amended to read:

"1-5-12. VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

A. A voter whose name does not appear on the voter list and signature roster for the precinct in which he offers to vote shall be permitted to vote in the precinct pursuant to the federal National Voter Registration Act of 1993 and Section 1-12-8 NMSA 1978.

B. The election clerks in charge of the signature rosters shall add the voter's name and address in ink to the signature roster on the line immediately following the last entered voter's name and the voter shall be allowed to sign an affidavit of eligibility and cast a provisional paper ballot, provided he has first signed or marked both the signature roster and checklist of registered voters.

C. The provisional paper ballot number for the voter shall be entered on the affidavit of eligibility, the signature roster and the checklist of registered voters.

D. In a primary election, a voter shall not be permitted to vote for a candidate of a party different from the party designation shown on his certificate of registration. Upon making that determination, the county clerk shall transmit the ballot to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.

E. Verbal authorization from the county clerk to allow a person to vote is not permitted."

Section 17. Section 1-6-2 NMSA 1978 (being Laws 1987, Chapter 327, Section 6, as amended) is amended to read:

"1-6-2. DEFINITIONS.--As used in the Absent Voter Act:

A. "absent uniformed services voter" means:

(1) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(2) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(3) a spouse or dependent of a member referred to in Paragraphs (1) and (2) of this subsection who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

B. "election" means a statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections;

C. "electronic ballot" means a paper ballot or ballot face designed to be used on an electronic voting machine to cast votes;

D. "electronic voting machine" means a computer-controlled machine designed to electronically record and tabulate votes cast;

E. "federal office" means the office of president, vice president or senator or representative in congress;

F. "federal qualified elector" means:

(1) an absent uniformed services voter; or

(2) an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved;

G. "member of the merchant marine" means an individual other than a member of a uniformed service or an individual employed, enrolled or maintained on the Great Lakes or the inland waterways who:

(1) is employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States or a vessel of a foreign-flag registry under charter to or control of the United States; or

(2) is enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as an officer or crew member of any such vessel;

H. "overseas voter" means:

(1) an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved;

(2) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(3) a person who resides outside the United States and, but for such residence, would be qualified to vote in the last place in which the person was domiciled before leaving the United States; and

I. "uniformed services" means the army, navy, air force, marine corps and coast guard and the commissioned corps of the national oceanic and atmospheric administration."

Section 18. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION--FEDERAL QUALIFIED ELECTOR--OVERSEAS VOTER.--

A. Application by a federal qualified elector or an overseas voter 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 the voter 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. The form shall allow the applicant to receive an absentee ballot for all elections within an election cycle.

C. Each application for an absentee ballot shall be subscribed by the applicant.

D. An application for an absentee ballot by a federal qualified elector or an overseas voter shall be accepted at any time preceding the general election."

Section 19. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended by Laws 2001, Chapter 49, Section 1 and by Laws 2001, Chapter 58, Section 1) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--MARKING AND DELIVERY OF BALLOT IN PERSON.--

A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant has no valid certificate of registration on file in the county and he is not a federal qualified elector or if the applicant states he is a federal qualified elector but his application indicates he is not a federal qualified elector, an absentee ballot shall not be issued and the county clerk shall mark the application "Rejected" and file the application in a separate file from those accepted.

C. The county clerk shall notify each applicant in writing of the fact of acceptance or rejection of his application and, if rejected, shall explain why the application was rejected.

D. If the applicant has on file with the county a valid certificate of registration that indicates that the applicant is a voter who registered by mail without submitting the required identification, the county clerk shall notify the voter that he must submit with his absentee ballot a copy of a current and valid photo identification, utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the applicant. The county clerk shall note on the absentee ballot register and signature roster that the applicant's absentee ballot must be returned with the required identification.

E. If the county clerk finds that the applicant is a voter or a federal qualified elector, the county clerk shall mark the application "Accepted" and deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. An absent voter shall not be permitted to change his party affiliation during those periods when change of party affiliation is prohibited by the Election Code. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter who has been provided or mailed an absentee ballot.

F. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall provide the voter an absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the voter leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the

requirements of a polling place in the Election Code other than is provided in this subsection. It shall be unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office. Absentee ballots may be marked in person during the regular hours and days of business at the county clerk's office from 8:00 a.m. on the fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter may be assisted by one person of the voter's choice.

G. Commencing with the twentieth day prior to an election, an absent voter may vote in person, on an electronic voting machine at the county clerk's office or at an alternate location established by the county clerk; provided, a county clerk may allow an absent voter to vote on an electronic voting machine beginning on the fortieth day before an election. In class A counties, the county clerk shall establish not less than four alternate locations as a convenience to the voters. Absentee voting may be done at the county clerk's office or an alternate location during the regular hours of business from 8:00 a.m. on the twentieth day prior to the election until 5:00 p.m. on the Saturday immediately prior to the election. The county clerk shall ensure that procedures established for processing an absent voter application and for voting by absentee ballot are complied with at each alternate location.

H. Absentee ballots shall be airmailed to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Thursday immediately prior to the date of the election.

I. An absentee ballot shall not be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

J. The county clerk shall accept and process, with respect to a primary or general election for any federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less than thirty days before the election. The county clerk shall also accept and process federal write-in absentee ballots from overseas voters in general elections for federal offices in accordance with the provisions of Section 103 of the federal Uniformed and Overseas Citizens Absentee Voting Act.

K. The secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting."

Section 20. Section 1-6-5.1 NMSA 1978 (being Laws 1991, Chapter 105, Section 10) is amended to read:

"1-6-5.1. FEDERAL ABSENTEE BALLOT DISTRIBUTION.--In the distribution of federal absentee ballots:

A. federal qualified electors and members of the uniformed services shall receive the entire ballot; and

B. all other overseas voters shall receive only ballots for federal candidates."

Section 21. Section 1-6-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 132, as amended) is amended to read:

"1-6-6. ABSENTEE BALLOT REGISTER.--

A. For each election, the county clerk shall keep an "absentee ballot register", in which he shall enter:

- (1) the name and address of each absentee ballot applicant;
- (2) the date and time of receipt of the application;
- (3) whether the application was accepted or rejected;
- (4) the date of issue of an absentee ballot in the county clerk's office or at an alternate location or the mailing of an absentee ballot to the applicant;
- (5) the applicant's precinct;
- (6) whether the applicant is a voter, a federal voter, a federal qualified elector or an overseas voter;
- (7) whether the voter is required to submit identification pursuant to Section 1-6-5 NMSA 1978; and
- (8) the date and time the completed absentee ballot was received from the applicant by the county clerk or the absent voter voted in the county clerk's office or at an alternate location.

B. Within twenty-four hours after receipt of a voter's application for an absentee ballot, the county clerk shall mail either the ballot or a notice of rejection to the applicant.

C. The absentee ballot register is a public record open to public inspection in the county clerk's office during regular office hours. The county clerk shall have an updated absentee ballot register available for public inspection Monday through Friday during regular office hours.

D. The county clerk shall deliver to the absent voter precinct on election day a complete list of all absentee ballot applicants with applicable information shown in

the absentee ballot register for each applicant up to 5:00 p.m. on the Thursday preceding the election. The county clerk shall deliver a signature roster containing the same information as the lists to the absent voter precinct board.

E. The county clerk shall transmit to the secretary of state and to the county chairman of each of the major political parties in the county a complete copy of entries made in the absentee ballot register. The transmissions shall be made once each week beginning four weeks immediately prior to the election. A final copy shall be transmitted on the Friday immediately following the election."

Section 22. Section 1-6-14 NMSA 1978 (being Laws 1971, Chapter 317, Section 11, as amended) is amended to read:

"1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER PRECINCT BOARDS.--

A. Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

B. If the voter's signature is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The election clerks shall enter the voter's name in the signature rosters and shall write the notation "Rejected--Missing Signature" in the "Notations" column of the signature rosters. The presiding judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. A lawfully appointed challenger may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the absent voter precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector, overseas voter or voter as provided in the Election Code.

Upon the challenge of an absentee ballot, the election judges and the presiding election judge shall follow the same procedure as when ballots are challenged when a person attempts to vote in person. If a challenge is upheld, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

D. If the official mailing envelope has been properly subscribed and the voter has not been challenged:

(1) the election judges shall open the official mailing envelope and deposit the ballot in its still-sealed official inner envelope in the locked ballot box; and

(2) the election clerks shall enter the absent voter's name and residence address as shown on the official mailing envelope in the signature rosters and shall mark the notation "AB" opposite the voter's name in the "Notations" column of the signature rosters.

E. Prior to the closing of the polls, the election judges and the presiding election judge may either remove the absentee ballots from the official inner envelopes and count and tally the results of absentee balloting or, under the personal supervision of the presiding election judge and one election judge from each major political party, count and tally the absentee ballots on an electronic voting machine the same as if the absent voters had been present and voted in person. It is unlawful for a person to disclose the results of a count and tally or the registration on a voting machine of absentee ballots prior to the closing of the polls.

F. Absentee ballots shall be counted and tallied on an electronic voting machine as provided in the Election Code.

G. Absent voter precinct polls shall close at the time prescribed by the Election Code for other polling places, and the results of the election shall be certified as prescribed by the secretary of state.

H. The county clerk may convene the absent voter precinct board no more than three days before the day of the election to alphabetize, enter on the roster and sort the absentee ballots by legislative district; provided that a member of the absent voter precinct board shall not open an official mailing envelope or count and canvass any absentee ballot prior to the day of the election.

I. If an absentee ballot does not contain the identification required pursuant to Subsection D of Section 1-6-5 NMSA 1978, it shall be handled as a provisional paper ballot in accordance with the Election Code."

Section 23. Section 1-9-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 185, as amended) is amended to read:

"1-9-2. SECRETARY OF STATE--MANNER OF APPROVAL.--

A. All voting systems approved for use in New Mexico shall meet federal election standards, conform to state information technology rules, standards and practices and be tested by an independent authority.

B. A person desiring to have a type of voting system approved for use in New Mexico may apply to the secretary of state to have the system examined and

approved. At the time application is made, the applicant shall direct the independent testing authority to submit its report on the system to the secretary of state.

C. Upon receipt of the report from the independent testing authority, the secretary of state shall examine and study the system. As part of the examination, the secretary of state shall require the system to be independently inspected by two voting system experts and shall require from each of them a written report on the results of their inspection.

D. Upon completion of his examination, the secretary of state shall make a written report on the result of his examination and findings and shall file such report, together with the inspection reports of the two voting system experts, in the office of the secretary of state. Such reports and findings are public records.

E. The secretary of state shall inform the applicant in writing of the findings. If the findings show that the voting system type is adequate for the election needs of New Mexico, it shall be deemed approved for use at elections in the state."

Section 24. Section 1-9-4.1 NMSA 1978 (being Laws 2001, Chapter 233, Section 15) is amended to read:

"1-9-4.1. TOUCH-SCREEN DIRECT RECORDING ELECTRONIC VOTING SYSTEMS--STANDARDS.--

A. A touch-screen direct recording electronic voting system, as approved by the secretary of state, may be used in any election for public office in New Mexico. As used in this section, "system" means a touch-screen direct recording electronic voting system.

B. The system shall:

- (1) meet federal election performance and test standards;
- (2) provide for direct recording and tabulating of votes cast;
- (3) have internal application software that:

application;

- (a) is specifically designed and engineered for the election

- (b) is contained within each touch-screen voting device;

- (c) is stored in a nonvolatile memory within each terminal;

- (d) includes internal quality checks such as purity or error detection and correction codes; and

(e) includes comprehensive diagnostics to ensure that failures do not go undetected;

(4) have a battery backup that will, at a minimum, allow voting to continue uninterrupted for two hours without external power;

(5) have internal audit trail capability such that all pre-election, election day and post-election events, including all random ballot image anomalies, shall be stored, recorded and recovered in an easy-to-read printed form and be retained within at least three independent memories that do not require any type of external alternating current or direct current battery power for memory retention;

(6) along with any and all activating and vote recording devices and components, have a unique embedded internal serial number for audit purposes;

(7) be a stand-alone, non-networked election system such that all pre-election, election day and post-election events and activities, including any and all entered votes, are directly entered, recorded and retained in each device in multiple memory locations within the device;

(8) for security purposes, along with each associated activating and recording device and component, employ a unique, electronically implanted election specific internal security code such that the absence of such code prevents substitution of any unauthorized system or related component;

(9) be designed to accept challenged or fail-safe ballots and allow voters to choose their ballot language directly on the system;

(10) be designed to accommodate the maximum number of ballot styles or ballot variations encountered in the largest New Mexico election jurisdiction;

(11) employ scalable technology allowing easy enhancements that meet federal election standards and can take advantage of new election technology such as larger touch-screens, optional touch-screen types, expandable memory, modem transmission of election results, ballot activation from automated voter registration and internet communication capabilities;

(12) have electronic components mounted on printed circuit boards and subsistence, such as printer, power sources, microprocessor, switch and indicator matrices modular and luggable;

(13) have a realtime clock capable of recording and documenting the total time polls are open in a precinct and capable of documenting the opening and closing of polls;

(14) prevent any voter from selecting more than the allowable number of candidates for any office to prevent overvoting, be able to alert the voter on a message screen if the voter attempts to overvote and inform the voter of any necessary corrective action;

(15) present the entire ballot to the voter in a series of sequential pages that include methods to ensure the voter sees all ballot options on all pages before completing his vote and allow the voter to review all ballot choices before casting his ballot;

(16) have as an integral part of the system a privacy curtain within which the voter casts his vote;

(17) have a color touch-screen that is at least fifteen inches in diagonal measure; and

(18) be able to accommodate a wheelchair voter without intervention of the poll worker other than a minor adjustment such as the angle of the display, and the voter must be able to vote in a face-first position so that privacy is maintained with the ballot surface adjusted to a vertical position.

C. If the net weight of the system, or aggregate of voting device parts, is over twenty pounds, the system shall have self-contained wheels so that the system can be easily rolled by one person on rough pavement and can roll through a standard thirty-inch door frame.

D. The device that is used by a poll worker to activate the system for each individual voter shall be a credit-card size "smart card" type of device. The poll worker shall be able to activate the card at the poll table with an activation device and hand the card to the voter to use on any open voting system. The card shall be rendered unusable by the voting system after the voter has cast a ballot. The system must be compatible with the voter registration system, so that the precinct and party information for a specific voter can be transferred to the system automatically and transferred to the smart card without poll-worker data entry. There shall be a manual solution available in the event the smart card activation device, or the smart card reading unit on the machine, fails.

E. Each system shall be able to print an alphanumeric printout of the contest, candidates, position numbers and vote totals when the polls are open so that the poll workers can verify that the counters for each candidate are on zero. At the close of the polls, the system shall be able to print out in the same format the results of the election. These printouts shall contain the system serial number, public counter total and protective counter number. The poll worker must be able to request as many copies as necessary by state law. The system shall include a feature to allow reports to be sent to a printer, the screen and a file.

F. The system central processing unit shall be designed so that no executable code can be launched from random access memory. If the operating system is open or widely used, it shall be an embedded system.

G. The system shall have a mandatory pre-election testing of the ballot control logic and accuracy. The logic and accuracy test results must be stored into the memory of the main processor (central processing unit) and into the same programmable memory device that is used on election day for future reference. This should be stored by vote total summaries and by each individual ballot image randomly. The system must be capable of printing a zero-results printout prior to these tests and a results printout after the test.

H. The system shall provide an electronic, redundant storage of both the vote totals and the randomized individual ballot images.

I. The system shall allow a comparison of the multiple locations of totals and ballot images to detect any errors or discrepancies. In the event of a data discrepancy, an appropriate error message shall be displayed in a text format, in order to either correct the data error or prohibit voting from continuing.

J. The system shall have a programmable memory device that plugs into the system. The programmable memory device shall contain ballot control information, summary vote totals, maintenance log, operator log and randomized ballot images.

K. The system shall maintain all vote totals, public counter totals, audit trail ballot images, protective counter totals and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery backup power fail.

L. The system shall have a self-contained, internal backup battery that powers all components of the system that are powered by alternating current power. In the event of a power outage in the precinct the self-contained, internal backup battery power shall engage with no disruption of operation or loss of data. The system shall maintain all vote totals, public counter totals, audit trail ballot images, protective counter totals and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery backup power fail.

M. The system software shall be able to:

- (1) run in a networked or stand-alone environment;
- (2) support absentee in-person voting;
- (3) collect and keep separate the absentee in-person vote totals by day collected, by machine, by legislative district and by site; and

(4) collect statistical data such as turnout so that it is available by date and site."

Section 25. Section 1-9-15 NMSA 1978 (being Laws 1985, Chapter 207, Section 14, as amended) is amended to read:

"1-9-15. ELECTRONIC VOTING SYSTEMS--RECORDING AND TABULATING VOTING SYSTEMS--STANDARDS.--

A. Electronic recording and tabulating voting systems as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, may be used in any election for public office in New Mexico.

B. The electronic recording and tabulating voting system shall meet the following standards:

(1) the system shall be an electronic computer-controlled voting system that provides for direct electronic recording and tabulating of votes cast;

(2) the operating system software of the system shall be stored in nonvolatile memory and shall include internal quality checks such as parity or error detection and correction codes. The software shall include comprehensive diagnostics to ensure that failures do not go undetected;

(3) the system shall have a battery backup system that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures;

(4) the system shall have, as a standard or as an option, software and hardware provisions for remote transmission of election results to a central location;

(5) subsistence, such as printer, power sources, microprocessor, switch and indicator matrices, shall be modular and luggable. Electronic components shall be mounted on printed circuit boards;

(6) the system shall be supplied with a dust- and moisture-proof cover for transportation and storage purposes;

(7) the system shall be able to operate in a temperature range of fifty degrees Fahrenheit to ninety degrees Fahrenheit;

(8) the system shall have a temperature range for storage of zero degrees Fahrenheit to one hundred twenty degrees Fahrenheit;

(9) the system shall have an operating and storage humidity range of thirty percent to eighty percent noncondensing;

(10) the system shall be able to accept line voltage of 115 VAC +/- fifteen percent, 60 HZ;

(11) the system shall be able to record and document the total time polls are open at a precinct location;

(12) the system shall prevent any voter from selecting more than the allowable number of candidates for any office and shall preclude overvoting;

(13) the system shall be capable of operating continuously for a minimum time period of sixteen hours without external power (115 VAC);

(14) the tabulation of votes on the system shall be stored, ballot by ballot, in three or more memory locations on separate integrated circuit chips and shall be electronically compared throughout the election. Any differences between votes tabulated and votes stored in multiple storage locations shall be detected immediately and generate an error message defining required maintenance on the system before it can continue to be used in the election;

(15) the system shall contain the entire ballot, which shall be placed on the face of the machine, and shall be visible to the voter on a single page;

(16) the system shall have a privacy booth in which the voter casts his vote, and the privacy booth shall be an integral part of the system; and

(17) the system shall be designed to meet the needs of physically disabled voters with or without adjustment of the unit by poll workers.

C. In determining compliance with the standards set forth in Subsection B of this section, the qualification test report made pursuant to the performance and test standards of federal election law shall be considered insofar as it is applicable."

Section 26. Section 1-9-16 NMSA 1978 (being Laws 1985, Chapter 207, Section 15, as amended) is amended to read:

"1-9-16. ELECTRONIC VOTING SYSTEMS--VOTE TABULATING SYSTEMS--STANDARDS.--

A. Electronic vote tabulating systems, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, may be used in any election for public office in New Mexico for the purpose of tabulating ballots.

B. The electronic vote tabulating system shall meet the following standards:

(1) the machine shall be an electronic computer-controlled voting system that provides for the direct electronic tabulation of votes cast;

(2) the operating software of the vote tabulating system shall be stored in nonvolatile memory and shall include internal quality checks such as parity or error detection and correction codes. The software shall include comprehensive diagnostics to ensure that failures do not go undetected;

(3) the system shall have a battery backup that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures;

(4) the system shall provide alphanumeric printouts of the vote totals by legislative district at the closing of the polls;

(5) the system shall have, as a standard or as an option, software and hardware provisions for remote transmission of election results to a central location;

(6) subsistence, such as printer, power sources, microprocessor, switch and indicator matrices, shall be modular and luggable. Electronic components shall be mounted on printed circuit boards;

(7) the system shall be supplied with a dust- and moisture-proof cover for transportation and storage purposes;

(8) the system shall be able to operate in a temperature range of fifty degrees Fahrenheit to ninety degrees Fahrenheit;

(9) the system shall have a temperature range for storage of zero degrees Fahrenheit to one hundred twenty degrees Fahrenheit;

(10) the system shall have an operating and storage humidity of thirty percent to eighty percent noncondensing;

(11) the system shall accept a line voltage of 115 VAC +- fifteen percent, 60 HZ;

(12) the system memory pack shall be able to accept over one thousand five hundred voting positions and tabulate over sixty-five thousand votes for each position;

(13) the system shall accept a ballot inserted in any orientation and one that is a minimum six inches wide and a maximum twenty-four inches long, in dual columns and printed on both sides. The ballot shall be able to hold a maximum of five hundred twenty candidate positions;

(14) the system shall recognize all errors and be able to reject or return a ballot that contains an error. The tabulator shall automatically be able to detect an overvoted ballot;

(15) the system shall contain an RS-232 data communications capability to transmit totals;

(16) the system shall contain a public display counter to record the number of ballots processed; and

(17) the system should be programmable with control cards.

C. In determining compliance with the standards set forth in Subsection B of this section, the qualification test report made pursuant to the performance and test standards of federal election law shall be considered insofar as it is applicable."

Section 27. Section 1-9-19 NMSA 1978 (being Laws 1985, Chapter 207, Section 18, as amended) is amended to read:

"1-9-19. ELECTRONIC VOTING SYSTEM REVOLVING FUND.--The "electronic voting system revolving fund" is created. The electronic voting system revolving fund may be used to finance, by contract, the purchase of electronic voting systems and necessary support equipment under the conditions stated in Section 1-9-17 NMSA 1978. The electronic voting system revolving fund may be expended upon vouchers signed by the secretary of finance and administration. If at the end of a fiscal year the electronic voting system revolving fund exceeds six million five hundred thousand dollars (\$6,500,000), the amount in excess of six million five hundred thousand dollars (\$6,500,000) shall revert to the general fund."

Section 28. Section 1-10-1 NMSA 1978 (being Laws 1977, Chapter 222, Section 24, as amended) is amended to read:

"1-10-1. BALLOT.--As used in the Election Code:

A. "ballot" means a system for arranging and designating for the voter the names of candidates, constitutional amendments 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, ballot cards, ballot sheets, provisional paper ballots and emergency paper ballots;

B. "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, a statement of the proposed constitutional amendment or other question or proposition to be voted upon;

C. "emergency paper ballot" means the paper ballot used in the circumstances covered under Section 1-12-43 NMSA 1978;

D. "ballot card" means a card upon which votes may be recorded by use of a pen or pencil for tabulation in an electronic vote tabulating machine;

E. "ballot sheet" means the sheet used on an electronic vote recording and tabulating machine containing the offices, candidates and questions to be voted on; and

F. "provisional paper ballot" means the paper ballot used pursuant to Section 1-5-10 or 1-12-8 NMSA 1978 or Section 3 of this 2003 act."

Section 29. Section 1-12-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 246, as amended) is amended to read:

"1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO VOTE.--

A. A person shall not vote in a primary, general or statewide special election unless he is a voter of the county in which he offers to vote. A valid original certificate of registration in the county register is prima facie evidence of being a voter in the precinct.

B. A person whose major party affiliation is not designated on his original certificate of registration shall not vote in a primary election.

C. A person at a primary election shall not be permitted to vote for the candidate of any party other than the party designated on his current certificate of registration."

Section 30. Section 1-12-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 247, as amended) is amended to read:

"1-12-8. CONDUCT OF ELECTION--PROVISIONAL VOTING.--

A. A person shall be permitted to vote on a provisional paper ballot even though his original certificate of registration cannot be found in the county register or even if his name does not appear on the signature roster, provided:

(1) his residence is within the boundaries of the county in which he offers to vote;

(2) his name is not on the list of persons submitting absentee ballots; and

(3) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector, is currently registered and eligible to vote in that county and has not cast a ballot or voted in that election.

B. A voter shall vote on a provisional paper ballot if the voter:

(1) has not previously voted in a general election in New Mexico;

(2) did not register to vote in person;

(3) did not submit the required identification with the certificate of registration form; and

(4) does not present to the election judge one of the following forms of identification that matches the name and address on the voter's certificate of registration:

(a) a current and valid photo identification; or

(b) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter.

C. An election judge shall have the voter sign the signature roster and issue the voter a provisional paper ballot, an outer envelope and an official inner envelope. The voter shall vote on the provisional paper ballot in secrecy and when done, place the ballot in the official inner envelope and place the official inner envelope in the outer envelope and return it to the precinct officer. The election judge shall ensure that the required information is completed on the outer envelope, have the voter sign it in the appropriate place and place it in an envelope designated for provisional paper ballots.

D. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code of this state, and voting on the basis of such falsely executed statement constitutes fraudulent voting."

Section 31. Section 1-16-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 378, as amended) is amended to read:

"1-16-5. STATE CONSTITUTIONAL AMENDMENTS--BALLOT--FORMS FOR EMERGENCY AND PROVISIONAL PAPER BALLOTS AND ABSENTEE BALLOTS.--

A. All emergency and provisional paper ballots and absentee ballots proposing constitutional amendments shall have printed thereon in both English and Spanish the full title of the joint resolution proposing the constitutional amendment and the constitutional amendment number assigned to the joint resolution by the secretary

of state. Below the printed title, there shall be printed on the ballot two one-quarter inch blank boxes. Opposite one of the blank boxes, there shall be printed in both English and Spanish the word "FOR", and opposite the other blank box shall be printed in both languages the word "AGAINST".

B. There shall be printed across the top of the ballot the following:
"Instructions to voters: If you desire to vote for the amendment, mark a cross (X) or a check () or any other mark clearly indicating intention in the opposite the word "FOR". If you desire to vote against the amendment, mark a cross (X) or a check () or any other mark clearly indicating intention in the opposite the word "AGAINST"."

Section 32. Section 1-16-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 379, as amended) is amended to read:

"1-16-6. STATE CONSTITUTIONAL AMENDMENTS--MARKING EMERGENCY AND PROVISIONAL PAPER BALLOTS AND ABSENTEE BALLOTS.--A voter desiring to mark his emergency or provisional paper ballot or absentee ballot for or against a proposed constitutional amendment shall do so in the manner specified in the instructions printed on the ballot."

Section 33. Section 1-16-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 381, as amended) is amended to read:

"1-16-9. STATE CONSTITUTIONAL AMENDMENTS--SINGLE EMERGENCY AND PROVISIONAL PAPER BALLOT AND ABSENTEE BALLOT.--Proposed constitutional amendments or other questions submitted to the voters on emergency or provisional paper ballots or absentee ballots at any election shall be printed upon one ballot only."

Section 34. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 383, AS AMENDED

CHAPTER 357

CHAPTER 357, LAWS 2003

AN ACT

RELATING TO ELECTIONS; CHANGING THE TIMES FOR ABSENTEE VOTING;
CHANGING REPORTING REQUIREMENTS FOR ABSENTEE BALLOT REGISTERS;
PROVIDING STANDARDS FOR VOTER ASSISTANCE; CONFORMING CERTAIN

SECTIONS OF THE ELECTION CODE TO THE REQUIREMENTS OF THE FEDERAL HELP AMERICA VOTE ACT OF 2002; AMENDING AND ENACTING SECTIONS OF THE ELECTION CODE.

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

Section 1. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION--FEDERAL QUALIFIED ELECTOR--OVERSEAS VOTER.--

A. Application by a federal qualified elector or an overseas voter 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 by the secretary of state. 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. The form shall allow the applicant to receive an absentee ballot for all elections within an election cycle.

C. Each application for an absentee ballot shall be subscribed by the applicant.

D. An application for an absentee ballot by a federal qualified elector or an overseas voter shall be accepted at any time preceding the general election."

Section 2. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended by Laws 2001, Chapter 49, Section 1 and by Laws 2001, Chapter 58, Section 1) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--MARKING AND DELIVERY OF BALLOT IN PERSON.--

A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant does not have a valid certificate of registration on file in the county and he is not a federal qualified elector or if the applicant states he is a federal qualified elector but his application indicates he is not a federal qualified elector,

an absentee ballot shall not be issued and the county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. The county clerk shall notify in writing each applicant of the fact of acceptance or rejection of his application and, if rejected, shall explain why the application was rejected.

D. If the applicant has on file with the county a valid certificate of registration that indicates that the applicant is a voter who registered by mail without submitting the required identification, the county clerk shall notify the voter that he must submit with his absentee ballot a copy of a current and valid photo identification, utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the applicant. The county clerk shall note on the absentee ballot register and signature roster that the applicant's absentee ballot must be returned with the required identification.

E. If the county clerk finds that the applicant is a voter other than a federal qualified elector or overseas voter, the county clerk shall mark the application "accepted" and, beginning twenty-eight days before the election, deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. If the county clerk finds that the applicant is a federal qualified elector or overseas voter, the county clerk shall mark the application "accepted" and beginning forty-five days before the election, mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. An absent voter shall not be permitted to change his party affiliation during those periods when change of party affiliation is prohibited by the Election Code. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter who has been provided or mailed an absentee ballot.

F. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall provide the voter an absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the voter leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code other than is provided in this subsection. It shall be unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office.

Absentee ballots may be marked in person at the county clerk's office during the regular hours and days of business beginning on the twenty-eighth day preceding the election and from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter, pursuant to the provisions of Section 1-12-15 NMSA 1978, may be assisted by one person of the voter's choice.

G. Commencing on the third Saturday prior to an election, an absent voter may vote in person, on an electronic voting machine at an alternate location established by the county clerk. In class A counties with more than two hundred thousand registered voters, the county clerk shall establish not less than twelve alternate voting locations as a convenience to the voters. For class A counties with two hundred thousand registered voters or less, the county clerk shall establish not less than four alternate voting locations. In non-class A counties with more than ten thousand registered voters, the county clerk shall establish at least one alternate voting location. In non-class A counties with ten thousand registered voters or less, early voting shall be conducted in the office of the county clerk or at such alternative locations as may be designated by the county clerk. Absentee voting may be done at an alternate location from 12:00 p.m. to 8:00 p.m., Tuesday through Friday, and 10:00 a.m. to 6:00 p.m. Saturday through the Saturday immediately prior to the election. The county clerk shall ensure that procedures established for processing an absent voter application and for voting by absentee ballot are complied with at each alternate location.

H. Absentee ballots shall be airmailed to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Thursday immediately prior to the date of the election.

I. An absentee ballot shall not be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

J. The county clerk shall accept and process, with respect to a primary or general election for any federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less than thirty days before the election. The county clerk shall also accept and process federal write-in absentee ballots from overseas voters in general elections for federal offices in accordance with the provisions of Section 103 of the federal Uniformed and Overseas Citizens Absentee Voting Act.

K. The secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting."

Section 3. Section 1-6-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 132, as amended) is amended to read:

"1-6-6. ABSENTEE BALLOT REGISTER.--

A. For each election, the county clerk shall keep an "absentee ballot register", in which he shall enter:

- (1) the name and address of each absentee ballot applicant;
- (2) the date and time of receipt of the application;
- (3) whether the application was accepted or rejected;
- (4) the date of issue of an absentee ballot in the county clerk's office or at an alternate location or the mailing of an absentee ballot to the applicant;
- (5) the applicant's precinct;
- (6) whether the applicant is a voter, a federal voter, a federal qualified elector or an overseas voter;
- (7) whether the voter is required to submit identification pursuant to Section 1-6-5 NMSA 1978; and
- (8) the date and time the completed absentee ballot was received from the applicant by the county clerk or the absent voter voted early in person in the county clerk's office or at an alternate location.

B. Within twenty-four hours after receipt of a voter's application for an absentee ballot, the county clerk shall mail either the ballot, if it is within twenty-eight days of election day or a notice of rejection to the applicant.

C. The absentee ballot register is a public record open to public inspection in the county clerk's office during regular office hours. The county clerk shall have an updated absentee ballot register available for public inspection Monday through Friday during regular office hours.

D. The county clerk shall deliver to the absent voter precinct on election day a complete list of all absentee ballot applicants and early voters with applicable information shown in the absentee ballot register for each applicant and early voter up to 6:00 p.m. on the Saturday preceding the election. The county clerk shall deliver a signature roster containing the same information as the lists to the absent voter precinct board.

E. The county clerk shall transmit to the secretary of state and to the county chairman of each of the major political parties in the county a complete copy of entries made in the absentee ballot register. Such transmissions shall be made once each week beginning four weeks immediately prior to the election. A final copy shall be transmitted on the Saturday immediately following the election.

F. If the county clerk has available the technology to do so, at the request of a candidate or chair of a political party of the county, the county clerk shall electronically transmit to the candidate or chair via the internet the information, when updated, on the absentee ballot register indicating voters who have requested absentee ballots, returned their absentee ballots or voted early in person."

Section 4. A new section of the Absent Voter Act is enacted to read:

"EARLY VOTING--ALTERNATIVE VOTING LOCATIONS--POLL WORKERS.--An alternate voting location shall be attended by at least two poll workers of different political parties."

Section 5. A new section of the Absent Voter Act is enacted to read:

"ABSENTEE BALLOT--DELIVERY TO COUNTY CLERK.--A voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the county clerk in person or by mail."

Section 6. A new section of the Absent Voter Act is enacted to read:

"EARLY VOTING--ALTERNATE VOTING PLACES--PROCEDURES.--The secretary of state shall adopt rules to:

A. ensure that voters have adequate access to alternate locations for early voting in each county, taking into consideration population density and travel time to the place of voting; and

B. ensure that early voters are not allowed to vote in person on election day."

Section 7. A new section of the Election Code is enacted to read:

"EARLY VOTER.--As used in the Election Code, "early voter" means a voter who votes in person before election day, and not by mail."

HOUSE BILL 984, AS AMENDED

CHAPTER 358

CHAPTER 358, LAWS 2003

AN ACT

RELATING TO TRANSPORTATION; INCLUDING TAXICAB SERVICES AND
TERMINAL SHUTTLE SERVICE AS NON-EXEMPT INTRASTATE BUSINESSES;
AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 65-2-82 NMSA 1978 (being Laws 1981, Chapter 358, Section 3, as amended by Laws 2001, Chapter 245, Section 3 and by Laws 2001, Chapter 259, Section 1) is amended to read:

"65-2-82. DEFINITIONS.--As used in the Motor Carrier Act:

A. "antitrust laws" means the laws of this state relating to combinations in restraint of trade;

B. "broker" means a person not included in the term "motor carrier" and not a bona fide employee or agent of any motor carrier who, as principal or agent, sells or offers for sale any transportation subject to the Motor Carrier Act or negotiates for or holds himself out by solicitation, advertisement or otherwise as one who sells, provides, furnishes, contracts or arranges for that transportation;

C. "certificate" means a certificate of public convenience and necessity issued under authority of the laws of the state to common motor carriers;

D. "clerk" or "chief clerk" means the chief clerk of the public regulation commission;

E. "commission" means the public regulation commission;

F. "common motor carrier" means a person who undertakes, whether directly or indirectly or by lease of equipment or operating rights or any other arrangement, to transport persons or property or any class of property for the general public by motor vehicle for compensation, whether over regular or irregular routes and under scheduled or nonscheduled service, but does not include farm carriers and does not include commuter vanpools;

G. "commuter vanpool" means a volunteer-driver commuter group that operates a vanpool that utilizes a seven- to fifteen-passenger vehicle to share rides to and from the workplace or training site; where participation is open to the public and incidental to the primary work- or training-related purposes of the individuals in the group; and where the volunteer drivers determine the daily vanpool route, have no employer-employee relationship with the vanpool operator and generally begin their vanpool driving duties at their home and end at the individual workplace or training site;

H. "contract motor carrier" means a person not a common motor carrier who, under individual contracts or agreements and whether directly or indirectly or by

lease of equipment or operating rights or any other arrangements, transports persons or property by motor vehicle for compensation, but does not include farm carriers;

I. "farm carrier" means a motor vehicle registered in this state being used in the transportation for hire of a cargo consisting of one or several of the following: farm produce, including grains, cotton, cottonseed, vegetables, hay and other farm products; livestock feed; livestock; stock salt; manure; wire; posts; dairy products; and farm or ranch machinery except tractors weighing more than forty-five thousand pounds;

J. "highway" means the public roads, highways, streets and ways in this state;

K. "household goods" means:

(1) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of the dwelling and other similar property as the commission may provide by rule; except that this paragraph shall not be construed to include property moving from a factory or store, except property as the householder has purchased with intent to use in his dwelling and that is transported at the request of, and the transportation charges paid to the carrier by, the householder;

(2) furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment or supply of stores, offices, museums, institutions, hospitals or other establishments and other similar property as the commission may provide by rule; except that this paragraph shall not be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to the moving of the establishment, or a portion of it, from one location to another; and

(3) articles, including objects of art, displays and exhibits, that, because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods and other similar articles as the commission may provide by rule; except that this paragraph shall not be construed to include any article, whether crated or uncrated, that does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods;

L. "interested parties" shall in all cases include all carriers operating over the routes or any part thereof or in the territory involved in an application for a certificate or permit or an application to file or change a schedule of rates, charges or fares or a rule or practice, and other parties as the commission may deem interested in the particular matter;

M. "irregular route" means a course to be used by a motor carrier that is not restricted to any specific highway within the area the motor carrier is authorized to serve;

N. "lease" means an arrangement whereby a motor carrier augments his equipment by use of equipment owned by others;

O. "license" means a license issued pursuant to the Motor Carrier Act to a broker;

P. "motor carrier" includes common motor carriers, contract motor carriers and any person performing for-hire transportation service without authority from the commission and farm carriers;

Q. "motor vehicle" means a vehicle, machine, tractor, trailer or semi-trailer propelled or drawn by mechanical power and used upon the highways in the transportation of property or persons, but does not include any vehicle, locomotive or car operated exclusively on rail or rails;

R. "permit" means a permit issued under authority of the laws of this state to contract motor carriers;

S. "person" means an individual, firm, partnership, corporation, company, association or organization and includes any trustee, receiver, assignee or personal representative thereof;

T. "regular route" means a fixed, specific and determined course to be traveled by a motor carrier's vehicles rendering service to, from or between various points, localities or municipalities in this state;

U. the "services" and "transportation" to which the Motor Carrier Act applies include all vehicles operated by, for or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property controlled by any motor carrier and used in the transportation of persons or property or in the performance of any service in connection therewith;

V. "shipper" means a person who consigns or receives goods for transportation;

W. "single-line rate" means a rate, charge or allowance proposed by a single common motor carrier of property that is applicable only over its line and for which the transportation can be provided by that common motor carrier;

X. "state" means New Mexico;

Y. "taxicab service" means a common motor carrier engaged in unscheduled passenger transportation in a motor vehicle having a capacity of not more than eight passengers, including the driver, not operated on a regular route or between specified places, and that:

(1) is licensed as a taxicab by a state or a local jurisdiction; or

(2) if not licensed or regulated by a state or local jurisdiction as a taxicab service, is offered by a person that:

(a) provides local transportation for a fare determined, except with respect to transportation to or from airport, train or bus terminals, primarily on the basis of the distance traveled; and

(b) does not primarily provide transportation to or from one or more airport, train or bus terminals;

Z. "terminal shuttle service" means a common motor carrier engaged in passenger transportation service that:

(1) is:

(a) pre-arranged by contract; or

(b) operated for hire on a regular route, allowing for deviation to pick up or drop off passengers, between specified or generally specified points; and

(2) primarily provides transportation to or from one or more airport, train or bus terminals but may also provide for intermediate pickup and departure of passengers;

AA. "towing company" means a common motor carrier engaged in transporting for hire disabled or abandoned motor vehicles by means of a tow truck or flatbed vehicle carrier; and

BB. "weight-bumping" means the knowing and willful making or securing of a fraudulent weight on a shipment of household goods that is subject to the jurisdiction of the commission under the Motor Carrier Act."

Section 2. Section 65-2-83 NMSA 1978 (being Laws 1981, Chapter 358, Section 4, as amended) is amended to read:

"65-2-83. POWERS AND DUTIES OF COMMISSION.--The commission is vested with power and authority, and it is its duty to:

A. regulate common motor carriers as provided in the Motor Carrier Act, and to that end, the commission shall establish reasonable requirements with respect to continuous and adequate service and shall establish reasonable requirements with respect to uniform systems of accounts, records and reports and preservation of records;

B. regulate contract motor carriers as provided in the Motor Carrier Act, and to that end, the commission shall establish reasonable requirements with respect to uniform systems of accounts, records and reports and preservation of records;

C. regulate, as intrastate services, taxicab services and terminal shuttle services, including those that may operate in part between this state and other states; provided that the service provides, with regard to any service run, for both:

(1) initiation of the transportation of one or more passengers within this state; and

(2) delivery to a departure point within this state of one or more passengers whose transportation on that service run was initiated at a point within this state;

D. regulate brokers as provided in the Motor Carrier Act, and to that end, the commission shall establish reasonable requirements with respect to licensing, financial responsibility, accounts, records, reports, operations and practices of any such person;

E. prescribe rules, regulations and procedures for the administration of the Motor Carrier Act, to make all necessary orders and do all things necessary to administer, execute, carry out and enforce the provisions of that act, except those powers set forth in Section 65-1-6 NMSA 1978; and

F. prescribe rules and procedures for default proceedings. In the event no protest or intervention is filed by a party within thirty (30) days of the date of notice to parties required to be notified by statute and to such other persons as the commission shall direct, a default proceeding may be held at any time thereafter pursuant to rules and procedures promulgated pursuant to this subsection."

Section 3. Section 65-2-115 NMSA 1978 (being Laws 1981, Chapter 358, Section 36, as amended) is amended to read:

"65-2-115. INTERSTATE CARRIERS--CERTIFICATE OF REGISTRATION--
PROCEDURE.--

A. No common or contract motor carrier engaged exclusively in interstate commerce shall operate for the transportation of persons or property for hire upon any public highway in this state without first either obtaining from the commission a

certificate of registration under the provisions of this section or complying with the provisions of Section 65-2-115.1 NMSA 1978, as directed by the commission.

B. The certificate of registration shall be issued to interstate carriers, as a matter of course, upon proper application being made and shall designate the route and type of service specified in the application. No certificate of registration shall authorize the holder to engage in whole or in part as a common or contract motor carrier in intrastate business within this state or to engage in any business or operate over any route not specified in the certificate of registration. The certificate of registration shall become void unless the applicant to which it is granted begins operations within thirty days from the date the certificate of registration is issued and shall become void if the service is thereafter discontinued or unless in either event an extension is granted upon proper showing by order of the commission. A taxicab service or terminal shuttle service is engaged in non-exempt intrastate business within the state, regardless of any prior exemption, if its service provides, with regard to any service run, for both:

(1) initiation of the transportation of one or more passengers within this state; and

(2) delivery to a departure point within this state of one or more passengers whose transportation on that service run was initiated at a point within this state.

C. The commission shall adopt rules prescribing the manner and form in which interstate motor carriers shall apply for certificates of registration but the application shall be in writing and sworn to and shall show: the name and address of the applicant and, if a corporation, the names of its officers and directors and their addresses; the entire route within this state over which the applicant desires to operate; the kind of transportation, whether passenger or freight or both, in which the applicant proposes to engage together with a brief description of each vehicle which the applicant intends to use, including the seating capacity if for passenger traffic or the tonnage capacity if for freight; a specification of the proposed schedule, the proposed rate schedule or schedules of rates for transportation or for services in connection therewith; and other information as the commission may require covering observance of New Mexico state police regulations and payment of license taxes and fees.

D. This certificate of registration shall be subject to all the motor carrier provisions of the revised Interstate Commerce Act, as amended, Subtitle 4, Title 49, United States Code."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

CHAPTER 359

CHAPTER 359, LAWS 2003

AN ACT

RELATING TO TRANSPORTATION; ENACTING A NEW MOTOR CARRIER ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--Sections 1 through 40 of this act may be cited as the "Motor Carrier Act".

Section 2. TRANSPORTATION POLICY.--It is the policy of this state to foster the development, coordination and preservation of a safe, sound and adequate motor carrier system, requiring financial responsibility and accountability on the part of motor carriers, providing for economic regulation of motor carriers of persons and

household goods and towing services performing nonconsensual tows and by streamlining and promoting uniformity of state regulation of motor carriers.

Section 3. DEFINITIONS.--As used in the Motor Carrier Act:

A. "amendment" means a permanent change in the type of service or territory authorized by an existing certificate or permit;

B. "antitrust laws" means the laws of this state relating to combinations in restraint of trade;

C. "base state" means the registration state for an interstate motor carrier that either is subject to regulation or is transporting commodities exempt from regulation by the federal motor carrier safety administration pursuant to the single state registration system;

D. "cancellation" means the voluntary, permanent termination of all or part of an operating authority;

E. "certificate" means the operating authority issued by the commission to intrastate common motor carriers of persons or household goods;

F. "change in a certificate or permit" means the amendment, cancellation, change in tariff, change in form of ownership, lease, reinstatement, transfer or voluntary suspension of a certificate or permit;

G. "change of name" means a change in the legal name of the owner of an operating authority or in the does-business-as name of the motor carrier, but does not include a change in the form of ownership;

H. "commission" means the public regulation commission;

I. "common control" means control of more than one operating authority of the same kind for the same or overlapping territory;

J. "common motor carrier" means a person offering compensated transportation by motor vehicle to the general public, whether over regular or irregular routes, or under scheduled or unscheduled service, but does not include commuter services;

K. "common tariff" means a tariff applying to two or more common motor carriers;

L. "commuter service" means a person who provides seven- to fifteen-passenger motor vehicles to a volunteer-driver commuter group that share rides to and from the workplace or training site, where participation is open to the public and incidental to the primary work or training-related purposes of the commuter group, and where the volunteer drivers have no employer-employee relationship with the commuter service;

M. "contract motor carrier" means a person offering compensated transportation by motor vehicle under individual agreements with particular customers or shippers;

N. "control" means the power to direct or cause the direction of the management and policies of a motor carrier deriving from:

(1) ownership of a sole proprietorship, if the operating authority is held by an individual as a sole proprietor;

(2) ownership of ten percent or more of the voting stock of the corporation, if the operating authority is held by a corporation;

(3) a partnership interest in a general partnership, if the operating authority is held by a general partnership;

(4) an interest in a limited partnership of ten percent or more of the total value of contributions made to the limited partnership, or entitlement to ten percent

or more of the profits earned or other compensation paid by the limited partnership, if the operating authority is held by a limited partnership;

(5) a membership interest of ten percent or more in a limited liability company, if the operating authority is held by a limited liability company; or

(6) capacity as a trustee, personal representative or other person with a fiduciary duty to a motor carrier;

O. "electronic filing" means submission of a document by facsimile, electronic mail or other electronic transmission;

P. "financial responsibility" means the ability to respond in damages for liability arising out of the ownership, maintenance or use of a motor vehicle in the provision of transportation services;

Q. "highway" means a way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

R. "household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of the dwelling and other similar property as the federal motor carrier safety administration may provide by regulation, but shall not include property moving from a factory or store, other than property the householder has purchased to use in his dwelling that is transported at the request of, and the transportation charges are paid to the carrier by, the householder;

S. "interested person" means a motor carrier operating over the routes or in the territory involved in an application or grant of temporary authority, a person affected by a rule proposed for adoption by the commission or a person the commission may deem interested in a particular matter;

T. "interstate motor carrier" means a person providing compensated transportation in interstate commerce, whether or not the person is subject to regulation by the federal motor carrier safety administration;

U. "intrastate motor carrier" means a person providing compensated transportation by motor vehicle between points and places in the state;

V. "involuntary suspension" means the temporary cessation of use of all or part of an operating authority ordered by the commission for cause for a stated period of time or pending compliance with certain conditions;

W. "irregular route" means that the route to be used by a motor carrier is not restricted to a specific highway within the territory the motor carrier is authorized to serve;

X. "lease of a certificate or permit" means an agreement by which the owner of a certificate or permit grants to another the exclusive right to use all or part of the certificate or permit for a specified period of time in exchange for consideration;

Y. "lease of equipment" means an agreement whereby a motor carrier obtains equipment owned by another for use by the motor carrier in the exercise of its operating authority;

Z. "motor carrier" means a person offering compensated transportation of persons or property by motor vehicle, whether in intrastate or interstate commerce;

AA. "motor carrier organization" means an organization approved by the commission to discuss and propose a common tariff for a group of motor carriers or to represent motor carriers that have adopted the common tariff;

BB. "motor carrier of persons" means a person who provides compensated transportation of persons on a highway in the state;

CC. "motor vehicle" means a vehicle, machine, tractor, trailer or semi-trailer propelled or drawn by mechanical power and used on a highway in the transportation of property or persons, but does not include a vehicle, locomotive or car operated exclusively on rails;

DD. "nonconsensual tow" means the compensated transportation of a motor vehicle by a towing service, if such transportation is performed at the request of a law enforcement officer or without the prior consent or authorization of the owner or operator of the motor vehicle;

EE. "operating authority" means a certificate, permit, warrant, single trip ticket, single state registration receipt or temporary authority issued by the commission to a motor carrier;

FF. "permit" means the operating authority issued by the commission to intrastate contract motor carriers of persons or household goods;

GG. "process" means an order, subpoena or notice issued by the commission or an order, subpoena, notice, writ or summons issued by a court;

HH. "property" means movable articles of value, including cadavers, hazardous matter, farm products, livestock feed, stock salt, manure, wire, posts, dairy products, livestock hauled in lots of twenty-five thousand pounds or more, farm or ranch machinery and the items transported by a towing service, but does not include

household goods or unprocessed farm products transported by a farmer from the place of harvesting to market, storage or a processing plant;

II. "protest" means a document filed with the commission by an interested person that expresses an objection to a matter before the commission;

JJ. "rate" means a form of compensation charged, whether directly or indirectly, by a person for a transportation service subject to the jurisdiction of the commission;

KK. "record" means an account, correspondence, memorandum, tape, disc, paper, book or transcribed information regarding the operation of a motor carrier;

LL. "registration year" means a calendar year;

MM. "regular route" means a route used by a motor carrier within the territory in which the motor carrier is authorized to serve that is fixed by its operating authority;

NN. "revocation" means the involuntary, permanent termination of all or part of an operating authority ordered by the commission for cause;

OO. "shipper" means a person who consigns or receives goods for transportation;

PP. "single state registration receipt" means the document issued annually to a motor carrier operating in interstate commerce evidencing that proof of financial responsibility and safety has been filed with the base state and that the annual per vehicle fees have been paid for that registration year;

QQ. "tariff" means a document filed by a motor carrier of persons or household goods or a towing service performing nonconsensual tows that has been approved by the commission and sets forth the transportation services offered by the motor carrier to the general public, including the rates, terms and conditions and applicable time schedules relating to those services, including a common tariff;

RR. "taxicab service" means a common motor carrier engaged in unscheduled passenger transportation in a motor vehicle having a capacity of not more than eight passengers, including the driver, not operated on a regular route or between specified places, and that:

(1) is licensed as a taxicab service by a state or local jurisdiction; or

(2) if not licensed or regulated by a state or local jurisdiction as a taxicab service, is offered by a person that:

(a) provides local transportation for a fare determined, except with respect to transportation to or from airport, train or bus terminals, primarily on the basis of the distance traveled; and

(b) does not primarily provide transportation to or from one or more airport, train or bus terminals;

SS. "terminal shuttle service" means a common motor carrier engaged in passenger transportation service that:

(1) is prearranged by contract or operated by hire on a regular route, allowing for deviation to pick up or drop off passengers, between specified or generally specified points; and

(2) primarily provides transportation to or from one or more airport, train or bus terminals but may also provide for intermediate pickup or departure of passengers;

TT. "towing services" means the use of specialized equipment, including repossession services using towing equipment, to transport:

(1) a damaged, disabled or abandoned motor vehicle and its cargo;

(2) a motor vehicle to replace a damaged, disabled or abandoned motor vehicle;

(3) parts and equipment to repair a damaged, disabled or abandoned motor vehicle;

(4) a motor vehicle whose driver has been declared unable to drive by a law enforcement officer;

(5) a motor vehicle whose driver has been removed from the scene or is unable to drive; or

(6) a motor vehicle repossessed or seized pursuant to lawful authority;

UU. "transfer of a certificate or permit" means a permanent conveyance of all or part of a certificate or permit;

VV. "transfer by operation of law" means that the ownership of or interest in a certificate or permit passes to another by application of established rules of law;

WW. "voluntary suspension" means the commission-authorized cessation of use of all or part of a certificate or permit at the request of the motor carrier for a specified period of time;

XX. "warrant" means the operating authority issued by the commission to charter services, towing services, commuter services and motor carriers of property; and

YY. "weight-bumping" means the knowing and willful statement of a fraudulent weight on a shipment of household goods.

Section 4. POWERS AND DUTIES OF THE COMMISSION.--

A. In accordance with the Motor Carrier Act, the commission shall:

(1) issue operating authorities for a motor carrier operating in New Mexico;

(2) establish minimum requirements for financial responsibility for a motor carrier;

(3) establish safety requirements for intrastate motor carrier motor vehicles and drivers subject to the jurisdiction of the commission, provided that the safety requirements shall not be inconsistent with or more stringent than applicable federal safety standards;

(4) establish reasonable requirements with respect to continuous and adequate service to be provided under an operating authority;

(5) regulate the rates of intrastate common motor carriers of persons and household goods and towing services performing nonconsensual tows, including rates for storing household goods and motor vehicles;

(6) determine matters of public convenience and necessity relating to motor carriers;

(7) subpoena witnesses and records, enforce its subpoenas through a court and, through the court, seek a remedy for contempt;

(8) hold a public hearing specific to a protest or request that has been filed timely in opposition to or in consideration of an application; and

(9) adopt rules, issue orders and conduct activities necessary to implement and enforce the Motor Carrier Act.

B. The commission may:

(1) designate inspectors who may inspect the records of a motor carrier subject to the Motor Carrier Act and who shall have the powers of peace officers in the state's political subdivisions with respect to a law or rule that the commission is empowered to enforce pursuant to Section 65-1-6 NMSA 1978, excluding the enforcement authority granted to the motor transportation division of the department of public safety;

(2) institute civil actions in the district court of Santa Fe county in its own name to enforce the Motor Carrier Act, its orders and rules, and in the name of the state to recover assessments of administrative fines;

(3) from time to time, modify the type of service, territory, terms, conditions and limitations of operating authorities previously issued, and change or rescind rates previously adopted as needed; and

(4) adopt rules to implement these powers.

Section 5. APPLICATIONS IN GENERAL--WHEN PUBLIC HEARINGS REQUIRED.--

A. A person shall file an application if commission approval is required. An application shall be made in writing, verified under oath and be in a form that contains information and is accompanied by proof of service upon interested persons as required by the commission.

B. The commission shall streamline and simplify to the extent possible the process for approving applications. The commission may hold a public hearing specific to a protest or request that has been timely filed in opposition to or in consideration of an application.

C. The commission shall hold a public hearing on an application whenever an interested person protests the application during the notice period or the transportation division of the commission requests a hearing during the notice period.

D. The commission may approve or deny an application in whole or in part.

Section 6. NOTICE.--

A. If the Motor Carrier Act requires publication of notice regarding an application before the commission, the requirement is met if notice is published once in a newspaper of general circulation in the state. The commission shall not act on the application less than twenty days after the date notice was published.

B. Whenever the Motor Carrier Act requires publication of notice regarding a matter other than an application, the requirement is met if notice is published once in

a newspaper of general circulation in the state. The commission shall not act on a matter less than ten days after the date notice was published.

Section 7. OPERATING AUTHORITIES IN GENERAL.--

A. A certificate, permit or warrant shall be effective from the date issued by the commission and shall remain in effect until canceled or revoked. A single state registration receipt for interstate motor carriers shall be effective only for the registration year for which it is issued. A single trip ticket shall be effective only for the duration of the trip for which it is issued.

B. A motor carrier shall carry a copy of its operating authority in each motor vehicle it operates in New Mexico.

C. A motor carrier shall render reasonably continuous and adequate service as the commission may by rule prescribe.

D. A motor carrier shall comply with lawfully adopted rules of the commission.

Section 8. CERTIFICATES FOR INTRASTATE COMMON MOTOR CARRIERS OF PERSONS.--

A. A common motor carrier of persons shall not provide compensated intrastate transportation in the state without a certificate from the commission.

B. Except as provided in this section, the commission shall issue a certificate allowing a person to provide compensated intrastate transportation as a common motor carrier of persons after notice and public hearing requirements are met, if:

(1) the person is fit, willing and able to provide the transportation service to be authorized by the certificate;

(2) the person is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act, the rules of the commission and other applicable federal and state laws and rules; and

(3) the transportation service to be provided under the certificate is or will serve a useful public purpose that is responsive to a public demand or need.

C. Before granting a certificate to an intrastate common motor carrier of persons, the commission shall consider the effect that issuance of the certificate would have on existing motor carriers; provided that the commission shall not find diversion of revenue or traffic from an existing motor carrier to be, in and of itself, sufficient grounds for denying the certificate.

D. A certificate issued by the commission to an intrastate common motor carrier of persons shall specify the:

(1) service to be rendered;

(2) territory to be served; and

(3) reasonable terms, conditions and limitations as the public convenience and necessity may require; and, if necessary:

(a) terminals between which service is to be provided; or

(b) routes, schedules and intermediate and off-route points on the route for regular route service.

Section 9. CERTIFICATES FOR INTRASTATE COMMON MOTOR CARRIERS OF HOUSEHOLD GOODS.--

A. A common motor carrier of household goods shall not provide compensated intrastate transportation in the state without a certificate from the commission.

B. Except as provided in this section, the commission shall issue a certificate allowing a person to provide compensated intrastate transportation as a common motor carrier of household goods after notice and public hearing requirements are met, if:

(1) the person is fit, willing and able to provide the transportation to be authorized by the certificate;

(2) the person is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act, the rules of the commission and other applicable federal and state laws and rules; and

(3) the transportation service to be provided under the certificate is or will serve a useful public purpose, responsive to a public demand or need. The proposed transportation service will be deemed to serve a useful public purpose, responsive to a public demand or need, if the application is for authority to provide:

(a) transportation to a community not regularly served by an authorized intrastate common motor carrier of household goods;

(b) transportation services that will be a direct substitute for abandoned rail service to a community if the abandonment results in the community not having rail service and if the application is filed within one hundred twenty days after the

abandonment has been approved by the commission or by the federal railway administration; or

(c) transportation for the United States government of used household goods that is incidental to a pack and crate service on behalf of the department of defense.

C. Before granting a certificate to an intrastate common motor carrier of household goods, the commission shall consider the effect that issuance of the certificate would have on existing carriers; provided that the commission shall not find diversion of revenue or traffic from an existing carrier to be, in and of itself, sufficient grounds for denying the certificate.

D. A certificate issued by the commission to an intrastate common motor carrier of household goods shall specify the territory to be served.

Section 10. PERMITS FOR INTRASTATE CONTRACT MOTOR CARRIERS OF PERSONS OR HOUSEHOLD GOODS.--

A. A contract motor carrier shall not provide compensated intrastate transportation of persons or household goods in the state without first having applied for and obtained a permit from the commission.

B. Except as provided in this section, the commission shall issue a permit allowing a person to provide compensated intrastate transportation as a contract motor carrier of persons or household goods after notice and public hearing requirements are met, if:

(1) the person is fit, willing and able to provide the transportation to be authorized by the permit;

(2) the person is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act, the rules of the commission and other applicable federal and state laws and rules; and

(3) the transportation to be provided under the permit is or will be consistent with the public interest.

C. Before granting a permit to an intrastate contract motor carrier of persons, the commission shall consider:

(1) the number of customers to be served by the carrier;

(2) the nature of the transportation proposed to be provided;

(3) whether granting the permit would endanger or impair the operations of motor carriers protesting the application for a permit to an extent contrary to the public interest;

(4) the effect that denying the permit would have on the person applying for the permit and its customers; and

(5) the changing character of the requirements of the applicant's customers.

D. The commission shall not issue a permit to an intrastate contract motor carrier of persons if it finds that the authority sought will impair the provision of transportation services by a certificated intrastate common motor carrier of persons then serving the same territory.

E. Before granting a permit to an intrastate contract motor carrier of household goods, the commission shall consider:

(1) whether granting the permit would endanger or impair the operations of carriers protesting the application for a permit to an extent contrary to the public interest; and

(2) the effect that denying the permit would have on the person applying for the permit and its shippers.

F. A permit issued by the commission shall specify the business of the intrastate contract motor carrier, the scope of the authority granted to it and the terms, conditions and limitations of the authority.

G. An intrastate contract motor carrier of persons or household goods shall file with the commission each contract under which it intends to operate. The commission shall approve a contract and authorize operations if it finds that the contract is consistent with the public interest and the provisions of this section.

H. The commission shall not limit an intrastate contract motor carrier of persons or household goods to a fixed number of contracts.

I. A motor carrier owning a certificate and a permit for the same type of service may use the same equipment for both common and contract services provided that shared use does not impair the provision of transportation services under the certificate.

Section 11. TEMPORARY AUTHORITY FOR INTRASTATE MOTOR CARRIERS OF PERSONS OR HOUSEHOLD GOODS.--

A. The commission may without notice grant temporary operating authority to an intrastate motor carrier of persons or household goods for a period not to exceed ninety days if it finds that:

(1) there is an urgent and immediate need for such service; and

(2) the applicant for temporary authority has a complete application for a certificate or permit or for amendment, lease or transfer of all or part of a certificate or permit, pending before the commission.

B. Satisfactory proof of urgent and immediate need shall be made by affidavit or other verified proof as the commission shall by rule prescribe.

C. An applicant for temporary authority as a common motor carrier shall file tariffs covering the transportation services for which temporary authority is being sought.

D. After temporary authority has been granted, the applicant shall give notice of the grant of temporary authority to a motor carrier authorized to perform the service temporarily authorized. If such motor carrier or the staff of the transportation division of the commission files a written request for a hearing within twenty-five days of the date notice was mailed, the commission shall hold a public hearing and make such further determination with respect to the grant of temporary authority as the public interest may require.

E. Intrastate motor carriers operating under temporary authority shall comply with the requirements of the Motor Carrier Act and the rules of the commission.

F. A grant of temporary authority shall not create a presumption that permanent authority will be granted.

Section 12. WARRANTS.--

A. It is unlawful for any commuter service, charter service, towing service or motor carrier of property to provide compensated intrastate transportation in the state without a warrant from the commission.

B. The commission shall issue a warrant that allows a person to provide compensated intrastate transportation as a commuter service, charter service, towing service or motor carrier of property if the commission finds that the person is in compliance with the financial responsibility and safety requirements of the Motor Carrier Act and the rules of the commission.

C. A person may protest an application for a warrant if the person has reason to believe that the applicant does not meet the safety or financial responsibility requirements of the Motor Carrier Act and the rules of the commission.

D. A warrant shall not be transferred or leased to another person.

E. The commission may without notice or a public hearing cancel a warrant if the owner fails to operate under the warrant for twelve consecutive months.

Section 13. PROTESTS OF APPLICATIONS FOR A CERTIFICATE OR PERMIT OR FOR A CHANGE IN A CERTIFICATE OR PERMIT.--

A. A contract motor carrier shall not protest an application for a certificate or for a change in a certificate.

B. A common or contract motor carrier shall not protest an application for a permit or for a change in a permit.

C. A common motor carrier shall not protest an application for a certificate or for a change in a certificate unless:

(1) it possesses authority to handle, in whole or in part, the traffic for which the applicant seeks authority, or it has pending before the commission an application for authority for substantially the same traffic filed prior to the application to be protested; and

(2) it is willing and able to provide service that meets the reasonable needs of the customers or shippers involved; and

(3) it has provided service within the scope of the protested application during the previous twelve-month period, or has actively and in good faith solicited service within the scope of the protested application during such period; or

(4) the commission grants leave to intervene upon a showing of other interests that are not contrary to the provisions of the Motor Carrier Act.

Section 14. CHANGES IN CERTIFICATES OR PERMITS.--

A. A change in a certificate, permit or tariff shall not be valid or effective without the approval of the commission.

B. The commission may, for good cause and after notice and public hearing requirements are met, authorize the following changes in all or part of a certificate or permit at the request of the person owning the certificate or permit if the commission finds:

(1) that the proposed rates are reasonable, non-predatory and nondiscriminatory for a change in a tariff;

(2) that the applicant meets the requirements pursuant to Section 8 of the Motor Carrier Act for an amendment of a certificate as a common motor carrier of persons;

(3) that the applicant meets the requirements pursuant to Section 10 of the Motor Carrier Act for an amendment of a permit as a contract motor carrier of persons;

(4) that the applicant meets the requirements pursuant to Section 9 of the Motor Carrier Act for an amendment of a certificate as a common motor carrier of household goods;

(5) that the applicant meets the requirements pursuant to Section 10 of the Motor Carrier Act for an amendment of a permit as a contract motor carrier of household goods;

(6) that for a transfer of all or part of a certificate or permit:

(a) the transferee-applicant is fit, willing and able to provide the authorized transportation services and to comply with the Motor Carrier Act and the rules of the commission;

(b) the transferor-applicant has rendered reasonably continuous and adequate service prior to the application for lease or transfer;

(c) accrued taxes, rents, wages of employees and other indebtedness pertaining to all or part of a certificate or permit proposed to be transferred have been paid by the transferor-applicant or assumed by the transferee-applicant;

(d) the transfer does not have the effect of destroying competition or creating a monopoly; and

(e) the transfer is not inconsistent with the public interest; or

(7) that for a lease of all or part of a certificate or permit:

(a) the lessee-applicant is fit, willing and able to provide the authorized transportation services and to comply with the Motor Carrier Act and the rules of the commission;

(b) the lessor-applicant has rendered reasonably continuous and adequate service prior to the application for lease;

(c) the lease does not have the effect of destroying competition or creating a monopoly; and

(d) the lease is not inconsistent with the public interest.

C. The commission may, without notice or a public hearing, authorize the following changes in all or part of a certificate or permit at the request of the person owning the certificate or permit:

- (1) cancellation of the certificate or permit;
- (2) voluntary suspension of the certificate or permit;
- (3) change in the form of ownership of the certificate or permit; and
- (4) reinstatement of the certificate or permit following voluntary suspension.

Section 15. MULTIPLE OPERATING AUTHORITIES ALLOWED-- COMMON CONTROL AND SHAM COMPETITION PROHIBITED.--

A. A person may simultaneously hold a certificate as a common motor carrier, a permit as a contract motor carrier and a warrant authorizing transportation by motor vehicle over the same routes or within the same territory, if the commission finds that the multiple operating authorities are consistent with the public interest.

B. A person shall not control more than one certificate or more than one permit for the same kind of service in the same territory.

C. The commission shall not grant any new operating authority to a motor carrier that:

(1) duplicates operating authority of the same kind and for the same territory already held by that motor carrier; or

(2) is under common control with another motor carrier that duplicates operating authority of the same kind or for the same or overlapping territory already held by either of them.

D. If two motor carriers come to be held in common control, and each motor carrier has operating authority that duplicates the operating authority of the other, then one of them shall have its operating authority modified to exclude the portion of the operating authority that is of the same kind and for the same territory, but shall be allowed to operate in the name and under the operating authority of the other motor carrier with which it is held in common control.

E. Motor carriers of household goods possessing both a certificate and permit may transport mixed loads of common and contract motor carrier household goods.

Section 16. INTERSTATE MOTOR CARRIERS.--

A. A motor carrier engaged in interstate commerce shall not provide compensated interstate transportation of persons or property on the highways of this state without a single state registration receipt from a base state. The commission is authorized to issue single state registration receipts without notice or a public hearing.

B. The commission is authorized to collect an annual per vehicle fee, enter into agreements with state agencies and other state governments and promulgate rules necessary to enable New Mexico to participate in the single state registration system or its successor system for interstate motor carriers either subject to regulation, or transporting commodities exempt from regulation, by the federal motor carrier safety administration pursuant to Section 4005 of the federal Intermodal Surface Transportation Efficiency Act of 1991, and implementing regulations promulgated by the federal motor carrier safety administration.

C. The commission shall require an application, proof of financial responsibility and a single state registration receipt showing that the annual per vehicle fee has been paid for New Mexico from an interstate motor carrier transporting commodities exempt from regulation by the federal motor carrier safety administration in interstate commerce on the highways of the state, but shall not require payment of duplicate annual per vehicle fees from an interstate motor carrier transporting both exempt and regulated commodities.

D. Compliance by an interstate motor carrier with the provisions of the federal Intermodal Surface Transportation Efficiency Act of 1991 shall not authorize a carrier to provide intrastate transportation services in New Mexico. An interstate motor carrier wishing to provide compensated transportation in intrastate commerce shall apply for the appropriate intrastate operating authority from the commission. A taxicab service or terminal shuttle service is engaged in nonexempt intrastate business within the state regardless of a prior exemption if its service provides, with regard to any service run, for both:

(1) initiation of the transportation of one or more passengers within this state; and

(2) delivery to a departure point within this state of one or more passengers whose transportation on that service run was initiated at a point within this state.

Section 17. SINGLE TRIP TICKETS.--The owner of a motor vehicle regularly used to convey children to and from school or school activities shall not use the motor vehicle for compensated transportation for a single trip sponsored by a charitable organization without a single trip ticket from the commission. An

application for a single trip ticket shall be in a form prescribed by the commission and shall state the time, purpose, origin and destination of the trip and the name, purpose and status of the charitable organization sponsoring the trip. The commission may issue a single trip ticket without notice or a public hearing only if it finds that no certificated or permitted common or contract motor carrier service is available for the trip described in the application and that the motor vehicle to be used for the trip complies with the safety requirements prescribed by the Motor Carrier Act and the commission's rules.

Section 18. FINANCIAL RESPONSIBILITY.--

A. A motor carrier shall not operate on the highways of this state without having filed with the commission proof of financial responsibility in the forms and amounts as the commission shall by rule prescribe.

B. In prescribing minimum requirements for financial responsibility for motor carriers, the commission shall consider:

(1) the creation of sufficient incentives to motor carriers to maintain and operate their equipment in a safe manner;

(2) the number of passengers being transported;

(3) the nature of the transportation services provided by the motor carrier; and

(4) other factors necessary to ensure that motor carriers maintain an appropriate level of financial responsibility.

C. The commission may authorize a motor carrier to carry its own insurance in lieu of filing a policy of insurance, certificate showing the issuance of a policy of insurance or a surety bond. In approving an application to be self-insured, the commission shall consider:

(1) the financial stability of the carrier;

(2) previous loss history of the carrier;

(3) the safety record of the carrier;

(4) the size, nature of operations and other operating characteristics of the carrier; and

(5) other factors necessary for the protection of passengers, shippers and the public.

D. Notwithstanding any requirement of the New Mexico Insurance Code to the contrary, the commission may accept proof of public liability insurance from an insurer not authorized in New Mexico if:

(1) the insurance is for an interstate motor carrier transporting commodities exempt from regulation by the federal motor carrier safety administration participating in the single state registration system for those motor carriers; and

(2) the insurer is authorized to write public liability insurance in at least one other state.

E. All motor carriers shall carry proof of financial responsibility in each motor vehicle they operate in this state.

Section 19. SAFETY REQUIREMENTS FOR MOTOR VEHICLES AND DRIVERS USED IN COMPENSATED TRANSPORTATION.--

A. A motor carrier shall provide safe and adequate service, equipment and facilities for the rendition of transportation services in this state.

B. The commission shall prescribe safety requirements for drivers and for motor vehicles weighing twenty-six thousand pounds or less or carrying fifteen or fewer persons, including the driver, used by intrastate motor carriers operating in this state. The commission may prescribe additional requirements related to safety, including driver safety training programs, vehicle preventive maintenance programs, inquiries regarding the safety of the motor vehicles and drivers employed by a motor carrier, and the appropriateness of the motor vehicles and equipment for the transportation services to be provided by the motor carrier.

C. A commuter service shall certify that it has a program providing for an initial drug test for a person seeking to be a commuter service driver. The program shall use reasonable collection and analysis procedures to ensure accurate results, require testing only for substances controlled by federal regulation of commercial motor carriers and ensure the confidentiality of the test results and medical information obtained.

D. The motor transportation division of the department of public safety may immediately order, without notice or a public hearing, a motor vehicle to be taken out of service for violation of a federal or state law or rule relating to safety if the violation would endanger the public health or safety.

Section 20. TARIFFS.--

A. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not commence operations or perform a new service under its operating authority without approval of a tariff from the commission.

B. An intrastate common motor carrier of persons or household goods and a towing service performing nonconsensual tows shall file with the commission proposed tariffs showing the rates, terms and conditions for transportation and related services between points in its territory. The rates shall be stated in terms of United States currency.

C. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not charge, or permit its bona fide agents or employees to charge, a different rate for transportation or for a service rendered to or for the user of the service other than the rates specified in approved tariffs in effect at the time. The rates of an otherwise valid tariff are not applicable when a medicaid program directly pays for services.

D. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not refund, directly or indirectly, a portion of the rate specified in its approved tariff, offer to a person privileges or facilities, perform a service or remit anything of value except in accordance with tariffs approved by the commission.

E. A person may make a complaint in writing to the commission that an individual or joint rate or practice is in violation of the Motor Carrier Act. The commission may suspend the operation of a rate or practice for a period not to exceed sixty days to investigate its reasonableness. If the commission finds that an individual or joint rate charged by an intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows, or an individual or joint practice of any intrastate common motor carrier of persons or household goods or any towing service performing nonconsensual tows affecting the rate, is unreasonable, predatory or discriminatory, the commission shall prescribe the rate or the maximum or minimum rate to be observed or the practice to be made effective.

Section 21. RATES.--

A. An intrastate common motor carrier of persons or household goods and a towing service performing nonconsensual tows shall observe reasonable, nonpredatory and nondiscriminatory rates and practices for the transportation services they provide. An unreasonable, predatory or discriminatory charge for service is unlawful.

B. Reduced rates for students traveling between their homes and their schools and for persons sixty-five years of age or older shall not be considered discriminatory within the meaning of this section. A motor carrier shall not furnish free

transportation to persons except to bona fide owners, officers or employees of the motor carrier and their dependents. Stockowners of incorporated motor carriers shall not be considered owners for purposes of this subsection.

C. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not give an unreasonable advantage to a person, point of entry, territory or classification of motor carrier in any respect; provided that towing services performing nonconsensual tows may charge rates lower than the rates in their approved tariff to members of not-for-profit motor clubs after those rates have been filed with the commission; and further provided that this subsection shall not be construed to apply to disadvantages to the transportation service of other motor carriers.

D. A common motor carrier of household goods shall establish and observe just and reasonable rates and practices relating to the manner and method of presenting, marking, packing and delivering household goods for transportation and other matters relating to the transportation of household goods.

E. An intrastate common motor carrier of persons or household goods and a towing service performing nonconsensual tows shall establish with each other reasonable through routes and joint rates and practices. Participating motor carriers shall have the duty to establish reasonable practices in connection with joint transportation and reasonable and equitable divisions of the joint rates adopted so as not to unduly prefer or prejudice any participating motor carrier.

F. In proceedings to determine the reasonableness of rates, the commission shall authorize revenue levels that are adequate under honest, economical and efficient management to cover total operating expenses, including the operation of leased motor vehicles, and depreciation, plus a reasonable profit. The rules adopted by the commission to implement this section shall allow a carrier to achieve revenue levels that will provide a flow of net income, plus depreciation, adequate to support prudent capital outlays, ensure the repayment of a reasonable level of debt, permit the raising of needed equity capital and attract and retain capital in amounts adequate to provide a sound motor carrier transportation system in the state.

Section 22. TIME SCHEDULES.--

A. An intrastate common motor carrier of persons providing scheduled service to the general public shall file a proposed time schedule with its application for a certificate. The commission shall approve the time schedule before the schedule is put into effect.

B. Failure by an intrastate common motor carrier of persons to operate the service on each day as scheduled shall result in an appropriate penalty as the commission, in its discretion, shall determine.

C. A time schedule shall not be designed to require the operation of a motor vehicle between given terminals or between way stations at a rate of speed greater than the maximum speed allowed.

Section 23. MOTOR CARRIER ORGANIZATIONS--COMMON TARIFFS.--

A. An intrastate common motor carrier may enter into discussions with another intrastate common motor carrier to establish a motor carrier organization. The organization shall obtain authorization from the commission before its members enter into any discussions concerning a common tariff. The commission shall not enter an order authorizing a motor carrier organization except after notice and public hearing requirements are met. The commission may authorize the creation of a motor carrier organization if the organization:

(1) allows a member carrier to discuss a tariff proposal filed with it, provided that only those carriers with authority to participate in the transportation to which the proposal applies may vote upon the proposal;

(2) does not interfere with a member carrier's right to establish its own tariff and does not change or cancel an independently established tariff;

(3) does not file a protest or complaint with the commission against a tariff item independently published by or for the account of a member carrier;

(4) does not permit its employees or an employee committee to file or act upon a proposal effecting a change in a tariff item published by or for the account of a member carrier;

(5) makes available, upon request, the name of the proponent of a rate or tariff item filed with it, admits the public to a meeting at which rates or tariff items will be discussed or voted upon and makes available the vote cast by a member carrier on a proposal before the motor carrier organization;

(6) prohibits a carrier to vote on behalf of one or more other member carriers without specific written notarized authority from the member carrier being represented;

(7) makes a final disposition of a rate or tariff item filed with the motor carrier organization within one hundred twenty days from the date the proposal is filed, except that if unusual circumstances require, the organization may extend the period, subject to review by the commission;

(8) adopts reasonable quorum standards for its meetings; and

(9) will propose common tariffs for approval by the commission.

B. A member carrier of the organization shall file with the commission information as the commission may by rule prescribe.

C. A motor carrier organization approved by the commission pursuant to this section shall be subject to accounting, record-keeping, reporting and inspection requirements as the commission may by rule prescribe.

D. The commission may, upon complaint or upon its own initiative, investigate and determine whether a motor carrier organization previously authorized by it is not in conformity with the requirements of this section or with the terms and conditions upon which the motor carrier organization was granted authorization. The commission may modify or terminate its authorization of a motor carrier organization found to be noncompliant with the requirements of this rule.

E. The antitrust laws of the state shall not apply to discussions concerning a common tariff by member carriers of a motor carrier organization authorized by the commission.

F. The motor carrier organization shall obtain approval of a common tariff from the commission before its member carriers may operate pursuant to the common tariff. The commission shall not enter an order approving a common tariff except after notice and public hearing requirements are met. The commission may approve a common tariff if the common tariff is limited to matters relating to transportation services provided by the member carriers party to the common tariff. The commission shall approve or disapprove a common tariff, in whole or in part, and may prescribe such terms and conditions as the public interest may require. The antitrust laws of the state shall not apply to common motor carriers who operate pursuant to a common tariff approved by the commission.

G. In any proceeding in which a party to the proceeding alleges that a member carrier voted, discussed or agreed on a common tariff in violation of this section, that party has the burden of showing that the vote, discussion or agreement occurred. A showing of parallel behavior shall not by itself satisfy that burden.

Section 24. MOTOR VEHICLE LEASES.--

A. An intrastate motor carrier shall not lease a motor vehicle or operate a leased motor vehicle without approval of each motor vehicle lease from the commission. The commission may approve a motor vehicle lease without notice or a public hearing.

B. A motor carrier shall file a separate motor vehicle lease for each motor vehicle to be leased.

C. The commission shall not approve a proposed motor vehicle lease if it finds that the purpose of the motor vehicle lease is to circumvent a provision of the Motor Carrier Act or rule of the commission.

D. The commission shall by rule specify which of the two parties to a motor vehicle lease will be responsible for complying with the financial responsibility and safety requirements of the Motor Carrier Act and the rules of the commission.

Section 25. HOUSEHOLD GOODS OPERATIONS.--

A. An intrastate common motor carrier of household goods shall be responsible for acts or omissions of its agents that relate to the performance of household goods transportation services, including accessorial or terminal services, that are within the actual or apparent authority of the agent derived from or ratified by the common motor carrier of household goods.

B. An intrastate common motor carrier of household goods shall use reasonable care in selecting and retaining household goods agents who are sufficiently knowledgeable, fit, willing and able to provide adequate household goods transportation services, including accessorial and terminal services, and to fulfill the obligations imposed upon them by the Motor Carrier Act and by the common motor carrier.

C. If the commission has reason to believe from a complaint or investigation that a household goods agent has violated Subsection G or H of Section 33 of the Motor Carrier Act, or is consistently unfit, unwilling or unable to provide adequate household goods transportation services, including accessorial and terminal services, the commission may issue to that household goods agent notice of the complaint, specific charges and the time and place for a hearing on the complaint. The hearing shall be held no later than sixty days after service of the complaint to the household goods agent. The household goods agent has the right to appear at the hearing and rebut the charges contained in the complaint.

D. If the household goods agent does not appear at the complaint hearing, or if the commission finds that the household goods agent has violated Subsection G or H of Section 33 of the Motor Carrier Act, or is consistently unfit, unwilling or unable to provide adequate household goods transportation services, including accessorial and terminal services, the commission shall issue an order to compel compliance by the household goods agent. Thereafter, the commission may issue an order to limit or prohibit the household goods agent from any involvement in the provision of household goods transportation services if, after notice and an opportunity to be heard, it finds that the household goods agent has failed to comply with the order within a reasonable time after the date of its issuance, but in no event less than thirty days after its issuance. A household goods agent may file a petition with the commission seeking reconsideration of an order entered by the commission pursuant to this section.

E. The commission shall adopt rules for the following elements of household goods transportation services:

(1) rates;

(2) cost estimates, for which charges shall be subject to the antitrust laws of this state;

(3) inventory;

(4) weighing;

(5) receipts and bills of lading;

(6) liability based on value established between the motor carrier and the shipper;

(7) joint transportation between common motor carriers of household goods;

(8) household goods agents; and

(9) service standards.

F. In adopting rules for intrastate common motor carriers of household goods, the commission shall consider:

(1) the level of performance that can be achieved by a well-managed motor carrier of household goods;

(2) the degree of harm to individual shippers that could result from a violation of the rule;

(3) the need to deter abuses that result in harm to shippers;

(4) service requirements of motor carriers of household goods;

(5) the cost of compliance in relation to the benefits to shippers to be achieved from such compliance; and

(6) the need to encourage motor carriers of household goods to offer service responsive to shippers' needs.

G. The antitrust laws shall not apply to discussions or agreements between an intrastate common motor carrier of household goods and its authorized agents, whether or not an agent is also a motor carrier of household goods, related solely to:

(1) rates for the transportation of household goods under the authority of the principal carrier;

(2) accessorial, terminal, storage or other charges for transportation services incidental to the transportation of household goods transported under the authority of the principal carrier;

(3) allowances relating to transportation of household goods under the authority of the principal carrier; or

(4) ownership of a common motor carrier of household goods by an agent or membership on the board of directors of any common motor carrier of household goods by an agent.

Section 26. HOUSEHOLD GOODS VOLUNTARY DISPUTE SETTLEMENT PROGRAMS.--

A. A common motor carrier of household goods may submit an application to the commission to establish a program to settle disputes between shippers and common motor carriers of household goods concerning the transportation of household goods. The application shall be in a form and contain information as the commission may by rule require.

B. The commission shall review and approve, within forty-five days of the filing of an application, a program for settling disputes concerning the transportation of household goods that meets the requirements of Subsection C of this section.

C. The commission shall not approve a program for settling disputes concerning the transportation of household goods unless the program is a fair and expeditious method for settling disputes and complies with each of the following requirements and rules the commission may prescribe:

(1) the program is designed to prevent a motor carrier from having any special advantage in a case in which the shipper resides or does business at a place distant from the motor carrier's place of business;

(2) the program provides adequate notice of its availability, including a concise, understandable and accurate summary of the program and disclosure of the legal effects of using the program. The notice shall be given to the shipper before the shipper tenders the household goods to the motor carrier for transportation;

(3) upon request of a shipper, the motor carrier shall promptly provide forms and other information necessary to initiate an action to resolve a dispute under the program;

(4) a person authorized pursuant to the program to settle disputes shall be independent of the parties to the dispute and shall be capable, as determined by rules prescribed by the commission, to resolve disputes fairly and expeditiously. The

program shall ensure that a person chosen to settle a dispute is authorized and able to obtain from the shipper or motor carrier any material and relevant information necessary to carry out a fair and expeditious decision-making process;

(5) the person settling the dispute may charge the shipper a fee of not more than twenty-five dollars (\$25.00) for instituting a proceeding under the program if the program is binding solely on the carrier, but shall not charge the shipper a fee otherwise. The person settling the dispute shall refund the fee to the shipper in a case in which the dispute is settled in favor of the shipper, unless the person settling the dispute determines that the refund is inappropriate;

(6) the program shall not require the shipper to agree to use the dispute settlement program prior to the time that a dispute arises;

(7) the program may provide for an oral presentation of a dispute concerning transportation of household goods by a party to the dispute or a party's representative, but an oral presentation shall not be made unless the parties to the dispute expressly agree to the presentation and the date, time and location of the presentation; and

(8) a person settling a dispute under the program shall, as expeditiously as possible, but no later than sixty days after receipt of written notification of the dispute, render a decision based on the information gathered; except that, in a case in which a party to the dispute fails to timely provide information that the person settling the dispute may reasonably require, the person settling the dispute may extend the sixty-day period for a reasonable period of time. A decision resolving a dispute may include remedies appropriate under the circumstances, including repair, replacement, refund or reimbursement for expenses and compensation for damages.

D. The commission may investigate at any time the functioning of a program approved under this section and may, after notice and an opportunity to be heard, suspend or revoke its approval for failure to meet the requirements of this section and rules as the commission may prescribe.

E. In a court action to resolve a dispute between a shipper and a common motor carrier of household goods, concerning the transportation of household goods by the carrier, the shipper shall be awarded reasonable attorney fees if:

(1) the shipper submits a claim to the carrier within one hundred twenty days after the date the shipment is delivered or the date delivery is scheduled, whichever is later; and

(2) the shipper prevails in the court action; and

(3) a dispute settlement program approved under this section was not available for use by the shipper to resolve the dispute; or

(4) a decision resolving the dispute was not rendered under a dispute settlement program approved under this section within sixty days or an extension of the sixty-day period; or

(5) the court proceeding is to enforce a decision rendered under a dispute settlement program approved under this section and is instituted after the period for performance under the decision has elapsed.

F. In a court action to resolve a dispute between a shipper and a common motor carrier of household goods concerning the transportation of household goods by the carrier, the carrier shall be awarded reasonable attorney fees by the court only if the shipper brought the action in bad faith:

(1) after resolution of the dispute under a dispute settlement program approved under this section; or

(2) after institution of a proceeding by the shipper to resolve the dispute under a dispute settlement program approved under this section; and before:

(a) the expiration of the sixty-day period or extension of the sixty-day period for resolution of the dispute; and

(b) a decision resolving the dispute is rendered under the program.

Section 27. INVOLUNTARY SUSPENSION, REVOCATION OR AMENDMENT OF OPERATING AUTHORITIES--REINSTATEMENT.--

A. The commission shall immediately suspend, without notice or a public hearing, the operating authority of a motor carrier for failure to continuously maintain the forms and amounts of financial responsibility prescribed by commission rule.

B. The commission may immediately suspend, without notice or a public hearing, the operating authority of a motor carrier for violation of a safety requirement of the Motor Carrier Act, the commission's rules or the rules of the motor transportation division of the department of public safety, if the violation endangers the public health or safety.

C. The commission may, upon complaint or the commission's own initiative and after notice and a public hearing, if required, order involuntary suspension, revocation or amendment, in whole or in part, of an operating authority for failure to:

(1) comply with a provision of the Motor Carrier Act;

(2) comply with a lawful order or rule of the commission;

(3) comply with a term, condition or limitation of an operating authority; or

(4) render reasonably continuous and adequate service under a certificate or permit.

D. The commission may approve an application for reinstatement of an operating authority following involuntary suspension if it finds, after notice and public hearing requirements are met, that:

(1) the reasons for the involuntary suspension no longer pertain;
and

(2) the owner of the operating authority is fit, willing and able to provide the authorized transportation services and to comply with the Motor Carrier Act and the rules of the commission.

Section 28. DESIGNATION OF AN AGENT FOR SERVICE OF PROCESS.--

A. An applicant for an operating authority shall file with the commission an appointment in writing of a resident agent for service of process. The appointment shall specify the address of the agent and shall stipulate that service upon the appointed agent of process of the commission or of a court shall have the same force and effect as if service had been made personally upon the motor carrier within this state. The appointment shall continue in force until the motor carrier files an appointment of a substitute agent, or until liability against the motor carrier growing out of its operations in the state has terminated. A copy of the appointment, duly certified by the commission, shall be accepted as sufficient evidence of appointment of an agent in a court of the state.

B. If a motor carrier owning an operating authority from the commission operates without appointing a resident agent for service of process, or the commission has unsuccessfully attempted to serve process upon the designated resident agent, the motor carrier shall be deemed to have appointed the secretary of state as its resident agent for service of process in an action or proceeding against the motor carrier growing out of an accident, collision or transaction in which the motor carrier may be involved by operating in this state.

C. If the secretary of state is served with process directed to a motor carrier owning an operating authority from the commission, the secretary of state shall forward the process by certified mail to the motor carrier at the address shown on its last change of address report, annual report or application with respect to its operating authority, whichever is most recent. The secretary of state shall file a certificate of service with the commission, which shall be accepted as prima facie proof of service.

D. The secretary of state shall assess to the motor carrier the fee prescribed in Section 36 of the Motor Carrier Act for a process from a court served upon the secretary of state but shall not charge a fee for service of commission process.

E. The principal motor carrier of a household goods agent shall be deemed to be the agent for service of process of the household goods agent unless the household goods agent notifies the commission in writing of the substitution of another agent for service of process.

Section 29. REPORTS AND RECORDS.--

A. The commission shall establish reasonable requirements with respect to reports, records and uniform systems of accounts and preservation of records for motor carriers.

B. The commission may require a motor carrier owning operating authority from the commission to prepare and transmit to the commission an annual report of its operations. The report shall be in the form, contain specific information, including financial information, and be due on a date as the commission may by rule require. Financial data filed by motor carriers in annual reports shall not be made available for inspection by the public.

C. The commission or its employees or duly authorized agents shall, at all times, have access to:

(1) land, buildings, improvements to real property and equipment of motor carriers used in connection with their operations; and

(2) records kept by motor carriers.

D. The commission may, by order, require a motor carrier subject to the Motor Carrier Act, or its officers or agents, to produce within this state at such reasonable time and place as it may designate, original or certified copies of records regardless of where they are kept by the motor carrier when their production is pertinent to a matter before the commission, in order that the commission may examine them.

E. The motor transportation division of the department of public safety shall furnish to the commission all information needed or required by the commission to carry out its responsibilities when the information is obtainable only through field enforcement.

Section 30. UNAUTHORIZED CARRYING OF PERSONS PROHIBITED.--A motor carrier not authorized to transport persons shall not carry a person, including a hitchhiker, except on-duty

employees of the motor carrier, commission representatives on official business or in case of an emergency.

Section 31. WITNESSES--SUBPOENAS--SERVICE OF PROCESS.--

A. If the commission orders a person to appear before it, the commission shall compensate the witness one full day's per diem plus mileage as provided for employees in the Per Diem and Mileage Act. The state shall pay such compensation out of the motor transportation fee fund pursuant to rules of the department of finance and administration. Witnesses subpoenaed by parties other than the commission shall be paid the same compensation by the party issuing the subpoena.

B. A person shall not be excused from testifying or producing documentary evidence before the commission or a court in obedience to a subpoena of the commission issued pursuant to the Motor Carrier Act on the ground that the testimony or documentary evidence required of the person may tend to incriminate him or subject him to a penalty. A person shall not be prosecuted or subjected to a penalty for a transaction or matter about which he may be required to testify or produce documentary evidence; provided that a person testifying shall not be exempt from prosecution and punishment for perjury committed in testifying. A person shall not be required to testify or produce documentary evidence in response to an inquiry not pertinent to a question lawfully before the commission or court for determination.

C. Upon request of a member of the commission, a district court may issue a writ of attachment to a person who fails to comply with a subpoena issued by the commission compelling the person to comply with the subpoena. The court shall have the power to punish for contempt in the same manner as for disobedience of a subpoena issued by the court.

D. A member of the commission may administer an oath, certify to an official act, issue a subpoena and compel the attendance of a witness and the production of evidence in hearings before the commission for the purposes provided in the Motor Carrier Act.

E. The commission may issue and serve process on the person affected by delivering a copy of the process, signed by a member of the commission, to the person or to an officer or agent of the person. An employee of the commission, a duly authorized law enforcement officer or a person over the age of eighteen who is not a party to the proceeding may serve process and shall return a copy of the process served, with an endorsement of service, to the commission. The endorsed process shall be entered into the record of the proceeding and shall be prima facie evidence that the process was duly served.

F. The commission may in writing authorize a commissioner, the chief of staff or other person to investigate and take testimony regarding a matter pending before the commission.

Section 32. ADMINISTRATIVE PENALTIES.--

A. If the commission finds after investigation that a provision of the Motor Carrier Act or an order or rule of the commission is being, has been or is about to be violated, it may issue an order specifying the actual or proposed acts or omissions to act that constitute a violation and require that the violation be discontinued, rectified or prevented.

B. Notwithstanding the existence of any other penalties, the commission may assess an administrative fine of not more than ten thousand dollars (\$10,000) for each violation of a provision of the Motor Carrier Act or of a lawful rule or order of the commission. In case of a continuing violation, each day's violation shall be deemed to be a separate and distinct offense.

C. Notwithstanding the existence of other penalties, the commission may assess an administrative fine of not more than ten thousand dollars (\$10,000) against a person knowingly using a motor carrier not properly authorized by the commission.

D. All penalties accruing under the Motor Carrier Act shall be cumulative, and a suit for recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution under the Motor Carrier Act.

Section 33. CRIMINAL AND CIVIL PENALTIES.--

A. A person who knowingly makes a false statement of material fact under oath in a commission proceeding, whether orally or in writing, shall be guilty of perjury.

B. A person who willfully makes a false return of process or report to the commission or a member or employee of the commission, and a person who knowingly aids or abets a person who willfully makes a false return of process or report to the commission or a member or employee of the commission, shall be guilty of a felony, and upon conviction shall be imprisoned for not more than five years.

C. A person who willfully makes a false entry in records required by the Motor Carrier Act or the rules of the commission, willfully destroys, mutilates or by other means willfully falsifies the records or willfully neglects or fails to make full, true and correct entries of all facts, shall be guilty of a felony and upon conviction shall be imprisoned for not more than five years.

D. An employee of the commission who divulges information about an inspection, examination or investigation of a record or of the property and facilities of a motor carrier, except insofar as may be authorized by the commission or a court of competent jurisdiction, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000).

E. A person who violates or who procures, aids or abets in the violation of a provision of the Motor Carrier Act or a rule or order of the commission shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000), imprisoned for not more than ninety days, or both.

F. A motor carrier shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500), imprisoned for not more than six months, or both, if the motor carrier:

(1) refuses to permit examination of its records;

(2) conceals, destroys or mutilates its records;

(3) attempts to conceal, destroy or mutilate its records; or

(4) removes its records beyond the limits of the state for the purpose of preventing examination.

G. A person who commits weight-bumping shall be guilty of a felony and upon conviction shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), imprisoned for not more than two years, or both.

H. A person shall be assessed a civil penalty of not more than two thousand dollars (\$2,000) for each violation and not more than five thousand dollars (\$5,000) for each subsequent violation if the person knowingly engages in or authorizes an agent or other person to:

(1) falsify the documents used in the transportation of household goods that evidence the weight of shipment; or

(2) charge for accessorial services that are not performed, or for which the carrier is not entitled to be compensated, in a case in which such services are not reasonably necessary for the safe and adequate transportation of the shipment.

I. A law enforcement officer of the state shall arrest and the district attorney and attorney general shall prosecute a violation of the Motor Carrier Act.

Section 34. ACTIONS TO ENFORCE COMMISSION ORDERS.--If a person fails to comply with an order of the commission within the time prescribed in the order or within thirty days after the order is entered, whichever is later, unless a stay has been granted, the commission shall seek enforcement of the order in the district court for Santa Fe county. The enforcement hearing shall be held on an expedited basis. At the hearing, the sole question shall be whether the person has failed to comply with the order.

Section 35. APPEAL TO SUPREME COURT.--

A. A motor carrier or other interested person aggrieved by a final order or determination of the commission issued pursuant to the Motor Carrier Act may appeal to the supreme court within thirty days. The appellant shall pay to the commission the costs of preparing and transmitting the record to the court.

B. The pendency of an appeal shall not automatically stay the order appealed from. The appellant may petition the commission or the supreme court for a stay of the order.

C. The appeal shall be on the record of the hearing before the commission and shall be governed by the appellate rules applicable to administrative appeals. The supreme court shall affirm the commission's order unless it is:

- (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.

Section 36. FEES.--

A. The commission shall charge and collect the following fees:

(1) for filing an application for a certificate as an intrastate common motor carrier of persons or household goods, two hundred fifty dollars (\$250);

(2) for filing an application for a permit as an intrastate contract motor carrier of persons or household goods, two hundred fifty dollars (\$250);

(3) for filing an application for a warrant as an intrastate commuter service, charter service, towing service or motor carrier of property, twenty-five dollars (\$25.00);

(4) for filing an application for intrastate temporary authority as a common or contract motor carrier of persons or household goods, one hundred dollars (\$100);

(5) for filing an application for extension of temporary authority, fifty dollars (\$50.00);

(6) for filing an application for a change in an intrastate tariff, two hundred dollars (\$200);

(7) for filing an application for lease or transfer of a certificate or permit, two hundred dollars (\$200);

(8) for filing an application for reinstatement of a certificate or permit following voluntary or involuntary suspension, one hundred dollars (\$100);

(9) for filing an application for voluntary suspension of a certificate or permit, fifteen dollars (\$15.00);

(10) for filing an application for a single trip ticket, five dollars (\$5.00) per vehicle per trip;

(11) for a single state registration receipt for interstate motor carriers, ten dollars (\$10.00) per vehicle per registration year or portion of a registration year;

(12) for filing a change of name, ten dollars (\$10.00);

(13) for filing proof of financial responsibility, fifteen dollars (\$15.00) per filing;

(14) for filing an equipment lease, five dollars (\$5.00) per vehicle leased;

(15) for a miscellaneous filing, five dollars (\$5.00) per document;

(16) for certifying copies of a record, order or operating authority, fifteen dollars (\$15.00);

(17) for copies of written commission documents or records, one dollar (\$1.00) per page, in addition to any applicable certification charge; and

(18) for copies of other commission records, including electronic media, an amount set by the commission, in addition to any applicable certification charge.

B. The secretary of state shall charge and collect a fee of four dollars (\$4.00) for each process from a court served upon the secretary of state as the designated agent for service of process by operation of law.

C. The "motor transportation fee fund" is created in the state treasury. The commission shall collect all fees at the time an application is filed or service is provided, and shall remit them to the state treasurer, who shall deposit them in the fund. At the end of each month, the state treasurer shall transfer the unencumbered balance in the fund to the state road fund.

D. If a fee has been erroneously paid, the person having paid the fee may apply for a refund in writing to the commission no later than sixty days after the erroneous payment. Upon approval of the application by the commission, the amount erroneously paid shall be refunded from the motor transportation fee fund to the person who made the payment.

E. An application shall be fully completed within sixty days or the fee submitted with the application shall be forfeited to the state. If the applicant renews the application, he shall pay the applicable fee.

Section 37. ELECTRONIC FILING AND CERTIFICATION OF DOCUMENTS--ELECTRONIC PAYMENT OF FEES.--

A. The commission may adopt rules permitting the electronic filing of documents, including original documents, and the certification of electronically filed documents when filing or certification is required or permitted pursuant to the Motor Carrier Act. The rules shall provide for the appropriate treatment of electronic filings to satisfy requirements for original documents or copies and shall provide the requirements for signature with respect to electronic filings. If the commission accepts electronic filing of a document, it may accept for filing a document containing a copy of a signature, however made.

B. The commission may accept a credit or debit card or other means of payment, in lieu of cash or check, as payment of a fee pursuant to the Motor Carrier Act. The commission shall determine those credit or debit cards or other means of payment that may be accepted for payment.

Section 38. EXEMPTIONS.--The Motor Carrier Act shall not apply to:

A. school buses, provided that school buses shall be subject to applicable school bus safety provisions established by the state transportation director;

B. United States mail carriers, unless they are engaged in other business as common or contract motor carriers of persons or household goods;

C. hearses, funeral coaches or other motor vehicles belonging to or operated in connection with the business of a funeral service practitioner licensed by the state;

D. a county or municipal public bus transportation system; or

E. private carriers.

Section 39. EFFECT ON MUNICIPAL POWERS.--Nothing contained in the Motor Carrier Act shall be construed:

A. to limit or restrict the police jurisdiction or power of a municipality over its streets, highways and public places except as otherwise provided by law;

B. in respect to matters other than rates and service regulations, to repeal a power of a municipality:

(1) to adopt and enforce reasonable police regulations and ordinances in the interest of the public safety, morals and convenience; or

(2) to protect the public against fraud, imposition or oppression by motor carriers within their respective jurisdiction.

Section 40. TRANSITION.--

A. A certificate of public convenience and necessity and a permit issued to an intrastate motor carrier of persons or household goods by the commission under the authority of previous acts shall remain in effect, subject to the provisions of the Motor Carrier Act and the commission's rules.

B. A certificate of public convenience and necessity and a permit issued to an intrastate motor carrier of property by the commission under the authority of previous acts shall become null and void on July 1, 2003. The commission shall issue a warrant to an intrastate motor carrier of property upon surrender of its certificate of public convenience and necessity or permit if, as of June 30, 2003, the motor carrier has valid proof of financial responsibility and current vehicle inspection certificates on file with the commission. The commission shall not charge the warrant application fee prescribed in Section 36 of the Motor Carrier Act.

C. A certificate of registration issued to a commuter vanpool or farm carrier by the commission under the authority of previous acts shall become null and void on July 1, 2003. The commission shall issue a warrant to a commuter service or motor carrier of property, commuter vanpool or farm carrier under previous acts upon surrender of its certificate of registration if, as of June 30, 2003, the motor carrier has valid proof of financial responsibility and current vehicle inspection certificates on file with the commission. The commission shall not charge the warrant application fee prescribed in Section 36 of the Motor Carrier Act.

D. A warrant issued to an intrastate charter service or a motor carrier of property by the commission pursuant to its rules shall remain in effect, subject to the provisions of the Motor Carrier Act and the commission's rules.

Section 41. Section 65-1-6 NMSA 1978 (being Laws 1967, Chapter 97, Section 8, as amended) is amended to read:

"65-1-6. FIELD ENFORCEMENT OF MOTOR CARRIER ACT AND REGULATIONS.--The department shall:

A. enforce in the field the provisions of the Motor Carrier Act and the regulations promulgated by the public regulation commission pursuant to that act; and

B. maintain sufficient personnel in the field to enforce the provisions of the Motor Carrier Act and the regulations promulgated by the public regulation commission pursuant to that act."

Section 42. Section 66-7-413 NMSA 1978 (being Laws 1978, Chapter 35, Section 484, as amended) is amended to read:

"66-7-413. PERMITS FOR EXCESSIVE SIZE AND WEIGHT--SPECIAL NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES.--

A. The department and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on any highway under the jurisdiction of the state transportation commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for any person to violate any of the conditions or terms of the special permit.

B. The department shall charge and collect, when the movement consists of any load of a width of twenty feet or greater for a distance of five miles or more, the sum of three hundred dollars (\$300) a day or fraction thereof to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one time requiring police escort and not upon the number of vehicles involved.

C. The department shall promulgate regulations in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier itself and for escort vehicles provided by a private business in this state.

(1) The department shall provide escort personnel with a copy of applicable rules and shall inspect the escort vehicles for the safety equipment required by the regulations. If the escort vehicles and personnel meet the requirements set forth in the rules, the department shall issue the special permit but shall not charge an escort fee. If a motor carrier provides its own escort vehicles and personnel, the department

shall require that the motor carrier have a warrant issued by the public regulation commission.

(2) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraph (1) of this subsection is subject to department authority and inspection at all times.

(3) The state highway and transportation department shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the state highway and transportation department shall hold public hearings in the area of the state affected by the determination, after which it may adopt regulations designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If any portion of such a four-lane highway lies within the boundaries of a municipality, the state highway and transportation department, after obtaining the approval of the municipal governing body, shall include such portions in its regulations.

D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department for a period not to exceed one year for a fee of sixty dollars (\$60.00). The permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the operation is to be within the vicinity of a municipality.

E. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued for a single vehicle for a fee of fifteen dollars (\$15.00).

F. If the vehicle for which a permit is issued under this section is a manufactured home, the department or local highway authority issuing the permit shall furnish the following information to the property tax division of the department, which shall then forward the information:

(1) to the county assessor of any county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property taxation.

G. Except as provided in Subsection H of this section, if the movement of a manufactured home originates in this state, no permit shall be issued under Subsection F of this section until the owner of the manufactured home or his authorized agent obtains and presents to the department proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) no liability for property taxes on the manufactured home exists for the current tax year or any past tax years, except for manufactured homes located on an Indian reservation.

H. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection G of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of his inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or his authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection G of this section whether the destination is the business location of a dealer or some other destination.

I. No permit shall be issued under this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

J. The secretary may by regulation provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes; however, in no case may the cost of each permit be less than fifteen dollars (\$15.00).

K. The secretary may provide by regulation for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-

purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department shall charge a fee for each self-issued permit not to exceed fifteen dollars (\$15.00).

L. Any private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing:

(a) fifty thousand dollars (\$50,000) for each person; and

(b) one hundred thousand dollars (\$100,000) for each accident; and

(2) property damage liability, providing twenty-five thousand dollars (\$25,000) for each accident.

M. A motor carrier requesting an oversize permit shall produce a copy of a warrant or single state registration receipt as evidence that the motor carrier maintains the insurance minimums prescribed by the public regulation commission."

Section 43. Section 66-8-116.2 NMSA 1978 (being Laws 1989, Chapter 319, Section 13, as amended) is amended to read:

"66-8-116.2. PENALTY ASSESSMENT MISDEMEANORS--MOTOR CARRIER ACT.--As used in the Motor Vehicle Code and the Motor Carrier Act, "penalty assessment misdemeanor" means, in addition to the definitions of that term in Sections 66-8-116 and 66-8-116.1 NMSA 1978, violation of the following listed sections of the NMSA 1978 for which the listed penalty is established:

A. GENERAL

COMMON NAME OF OFFENSE	SECTION VIOLATED ASSESSMENT	PENALTY
Failure to register motor carrier	65-1-12	\$100.00
Failure to carry identification card	65-1-26	50.00
Failure to comply with public regulation		

commission rules and

Section 7 of the

Motor Carrier Act 50.00

Failure to

carry single state

registration receipt

Section 7 of the

Motor Carrier Act 50.00

Failure to stop at

designated

registration place

65-5-1

100.00

Failure to obtain

proper clearance

certificates

65-5-3

100.00.

B. VEHICLE OUT-OF-SERVICE VIOLATIONS

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
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Absence of braking action	65-3-9	\$100.00
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Damaged brake lining or pads	65-3-9	50.00
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Loose or missing brake

components

65-3-12

100.00

Inoperable breakaway braking

system

65-3-12

50.00

Defective or damaged brake

tubing	65-3-12	50.00
Inoperative low pressure warning device	65-3-9	50.00
Reservoir pressure not maintained	65-3-12	100.00
Inoperative tractor protection valve	65-3-9	100.00
Damaged or loose air compressor	65-3-12	100.00
Audible air leak at brake chamber	65-3-12	50.00
Defective safety devices-- chains or hooks	65-3-9	100.00
Defective towing or coupling devices	65-3-9	100.00
Defective exhaust systems	65-3-9	30.00
Frame defects--trailers	65-3-12	100.00
Frame defects--other	65-3-9	100.00
Defective fuel systems	65-3-9	50.00
Missing or inoperative lamps	65-3-9	25.00
Missing lamps on projecting loads	65-3-9	50.00

Missing or inoperative		
turn signal	65-3-9	25.00
Unsafe loading	65-3-8	100.00
Excessive steering wheel		
play	65-3-9	100.00
Steering column defects	65-3-9	100.00
Steering box or steering		
system defects	65-3-9	100.00
Suspension system defects	65-3-9	50.00
Defective springs or spring		
assembly	65-3-9	50.00
Defective tires--steering		
axle	65-3-9	100.00
Defective tires--other axles	65-3-9	30.00
Defective wheels and rims	65-3-9	50.00
Defective or missing		
windshield wipers	65-3-9	30.00
Defective or inoperative		
emergency exit--bus	65-3-9	100.00.

C. DRIVER OUT-OF-SERVICE VIOLATIONS

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
ASSESSMENT		
Driver's age	65-3-7	30.00

Driver not licensed for type of vehicle being operated	65-3-7	30.00
Failure to have valid commercial driver's license in possession	66-5-59	30.00
No waiver of physical disqualification in possession	65-3-7	30.00
Sickness or fatigue	65-3-8	100.00
Driver disqualification	65-3-7	500.00
Exceeding the 10-hour driving rule	65-3-11	100.00
Exceeding the 15-hour on duty rule	65-3-11	100.00
Exceeding the 60 hours in 7 days on duty rule	65-3-11	100.00
Exceeding 70 hours in 8 days on duty rule	65-3-11	100.00
False log book	65-3-11	100.00.

D. HAZARDOUS MATERIALS OUT-OF-SERVICE VIOLATIONS

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
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ASSESSMENT

Placarding violations	65-3-13	250.00
Cargo tank not meeting specifications	65-3-13	250.00
Internal valve operation violations	65-3-13	250.00
Hazardous materials packaging violations	65-3-13	250.00
Insecure load--hazardous materials	65-3-13	250.00
Shipping papers violations	65-3-13	30.00
Shipment of forbidden combination of hazardous materials	65-3-13	250.00
No hazardous waste manifest	65-3-13	30.00
Bulk packaging marking violations	65-3-13	30.00
Cargo tank marking violations	65-3-13	30.00."

Section 44. REPEAL.--Sections 65-2-80 through 65-2-127 and 65-4-1 through 65-4-18 NMSA 1978 (being Laws 1981, Chapter 358, Sections 1 through 36, Laws 1993, Chapter 95, Section 2, Laws 1981, Chapter 358, Section 37, Laws 2001, Chapter 259, Section 2, Laws 1981, Chapter 358, Section 38, Laws 1998, Section 108, Chapter 75, Laws 1981, Chapter 358, Sections 42 through 46, Laws 1987, Chapter 134, Section 3, Laws 1981, Chapter 358, Sections 47

and 48 and Laws 1933, Chapter 120, Sections 1 through 17 and 19, as amended) are repealed.

Section 45. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 698, AS AMENDED

CHAPTER 360

CHAPTER 360, LAWS 2003

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; REQUIRING EMPLOYERS TO OFFER HEALTH INSURANCE TO BE ELIGIBLE FOR INDUSTRIAL REVENUE BONDS OR IN-PLANT TRAINING FUNDS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 3-32-7 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-31-4, as amended) is amended to read:

"3-32-7. BONDS ISSUED TO FINANCE PROJECTS.--

A. Bonds issued by a municipality under authority of the Industrial Revenue Bond Act shall not be the general obligation of the municipality within the meaning of Article 9, Sections 12 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of the revenue derived from the projects for which the bonds are issued. Bonds and interest coupons, if any, issued under authority of the Industrial Revenue Bond Act shall never constitute an indebtedness of the municipality within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond.

B. The bonds may be executed and delivered at any time, and from time to time, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding thirty years from their date, may be payable at such place or places, may bear interest at such rate or rates payable at such place or places and evidenced in such manner and may contain such provisions not inconsistent with the Industrial Revenue Bond Act, all as shall be provided in the

ordinance and proceedings of the governing body under which the bonds are authorized to be issued.

C. Bonds issued under the authority of the Industrial Revenue Bond Act may be sold at public or private sale in such manner and from time to time as may be determined by the governing body to be most advantageous, and the municipality may pay all expenses, attorney, engineering and architects' fees, premiums and commissions that the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

D. Bonds issued under the authority of the Industrial Revenue Bond Act and all interest coupons applicable thereto, if any, shall be construed to be negotiable.

E. A bond shall not be issued by a municipality having a population of more than forty thousand according to the most recent decennial census to finance a project that is valued at eight million dollars (\$8,000,000) or more unless an employer of the project:

(1) offers to its employees and their dependents health insurance coverage that is in compliance with the New Mexico Insurance Code or a comparable health benefits plan pursuant to the federal Employee Retirement Income Security Act of 1974; and

(2) contributes not less than fifty percent of the premium for the health care coverage for those employees who choose to enroll; provided that the fifty percent employer contribution shall not be a requirement for the dependent coverage that is offered."

Section 2. Section 4-59-5 NMSA 1978 (being Laws 1975, Chapter 286, Section 5, as amended) is amended to read:

"4-59-5. BONDS ISSUED TO FINANCE PROJECTS.--

A. Bonds issued by a county under authority of the County Industrial Revenue Bond Act shall not be the general obligation of the county within the meaning of Article 9, Sections 10 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of the revenue derived from the projects for which the bonds are issued. Bonds and interest coupons, if any, issued under authority of the County Industrial Revenue Bond Act shall never constitute an indebtedness of the county within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond.

B. The bonds may be executed and delivered at any time, and from time to time, may be in such form and denominations, may be of such tenor, may be in

registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding thirty years from their date, may be payable at such place or places, may bear interest at such rate payable at such place or places and evidenced in such manner and may contain such provisions not inconsistent with this section, all as shall be provided in the ordinance and proceedings of the commission under which the bonds shall be authorized to be issued.

C. The bonds issued under the authority of the County Industrial Revenue Bond Act may be sold at public or private sale in such manner and from time to time as may be determined by the commission to be most advantageous, and the county may pay all expenses, attorney, engineering and architects' fees, premiums and commissions that the commission may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

D. The bonds issued under the authority of the County Industrial Revenue Bond Act and all applicable interest coupons shall be construed to be negotiable.

E. A bond shall not be issued by a class A county to finance a project unless an employer of the project that is valued at eight million dollars (\$8,000,000) or more:

(1) offers to its employees and their dependents health insurance coverage that is in compliance with the New Mexico Insurance Code; and

(2) contributes not less than fifty percent of the premium for the health insurance for those employees who choose to enroll; provided that the fifty percent employer contribution shall not be a requirement for the dependent coverage that is offered."

Section 3. 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, and 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 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 a company through in-plant training, at that 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 be provided 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) payment shall not 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; provided, however, that prior to July 1, 2004, the residency requirements may be waived in part for projects within New Mexico communities located within fifty miles of the state border if the project meets the following criteria:

(a) the project will employ more than one thousand five hundred employees;

(b) the resident labor force within a fifty-mile radius of the project location is not sufficient to fill the full-time-equivalent position requirements of the project as determined by the labor department;

(c) preference for training shall be given to New Mexico residents; and

(d) no less than fifty percent of the project's work force shall be residents of New Mexico;

(3) payment for institutional classroom training shall be made pursuant to any accepted training contract for a qualified training program;

(4) payment shall not be made pursuant to 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 of 1938, as amended, 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;

(8) payment shall not 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; and

(9) if a company hires twenty or more trainees, payment shall not be made for training in a municipality having a population of more than forty thousand according to the most recent decennial census or a class A county unless the company:

(a) offers its employees and their dependents health insurance coverage that is in compliance with the New Mexico Insurance Code; and

(b) contributes not less than fifty percent of the premium for the health insurance for those employees who choose to enroll; provided that the fifty percent employer contribution shall not be a requirement for the dependent coverage that is offered."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2004.

SENATE BILL 419, AS AMENDED

CHAPTER 361

CHAPTER 361, LAWS 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
EXEMPTING UTILITY SERVICE VEHICLES FROM CERTAIN TRAVEL
RESTRICTIONS.

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

Section 1. Section 66-7-413 NMSA 1978 (being Laws 1978, Chapter 35, Section 484, as amended) is amended to read:

"66-7-413. PERMITS FOR EXCESSIVE SIZE AND WEIGHT--SPECIAL NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES.--

A. The department and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on any highway under the jurisdiction of the state transportation commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for any person to violate any of the conditions or terms of the special permit.

B. The department shall charge and collect, when the movement consists of any load of a width of twenty feet or greater for a distance of five miles or more, the sum of three hundred dollars (\$300) a day or fraction thereof to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one time requiring police escort and not upon the number of vehicles involved.

C. The department shall promulgate regulations in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier himself and for escort vehicles provided by a private business in this state.

(1) If a motor carrier provides his own escort vehicles and personnel, the department shall not charge an escort fee but shall provide the motor carrier escort personnel with a copy of applicable regulations and shall inspect the escort vehicles for the safety equipment required by the regulations. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the motor carrier holds a valid certificate of public convenience and necessity or permit, as applicable, issued pursuant to Chapter 65, Article 2 NMSA 1978, the department shall issue the special permit.

(2) If the escort service is a private business, the business shall have applied to the public regulation commission for and been issued a permit or certificate to operate as a contract or common motor carrier pursuant to Chapter 65, Article 2 NMSA 1978. The public regulation commission shall supply copies of applicable regulations to the business by mail and shall supply additional copies upon request. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the escort service holds a certificate, the special permit shall be issued and the department shall not charge an escort fee.

(3) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraphs (1) and (2) of this subsection is subject to department authority and inspection at all times.

(4) The state highway and transportation department shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the state highway and transportation department shall hold public hearings in the area of the state affected by the determination, after which it may adopt regulations designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If any portion of such a four-lane highway lies within the boundaries of a municipality, the state highway and transportation department, after obtaining the approval of the municipal governing body, shall include such portions in its regulations.

D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department for a period not to exceed one year for a fee of sixty dollars (\$60.00). The permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the operation is to be within the vicinity of a municipality. Utility service vehicles, operating with special permits pursuant to this subsection, shall be exempt from prohibitions or restrictions relating to hours or days of operation or restrictions on movement because of poor weather conditions.

E. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued for a single vehicle for a fee of fifteen dollars (\$15.00).

F. If the vehicle for which a permit is issued under this section is a manufactured home, the department or local highway authority issuing the permit shall furnish the following information to the property tax division of the department, which shall then forward the information:

(1) to the county assessor of any county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property taxation.

G. Except as provided in Subsection H of this section, if the movement of a manufactured home originates in this state, no permit shall be issued under Subsection F of this section until the owner of the manufactured home or his authorized agent obtains and presents to the department proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) no liability for property taxes on the manufactured home exists for the current tax year or any past tax years, except for manufactured homes located on an Indian reservation.

H. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection G of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of his inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or his authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection G of this section whether the destination is the business location of a dealer or some other destination.

I. No permit shall be issued under this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

J. The secretary may by regulation provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes; however, in no case may the cost of each permit be less than fifteen dollars (\$15.00).

K. The secretary may provide by regulation for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-

purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department shall charge a fee for each self-issued permit not to exceed fifteen dollars (\$15.00).

L. Any private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing:

(a) fifty thousand dollars (\$50,000) for each person; and

(b) one hundred thousand dollars (\$100,000) for each accident; and

(2) property damage liability, providing twenty-five thousand dollars (\$25,000) for each accident.

M. Any common motor carrier requesting an oversize permit shall produce a copy of a form "e" or other acceptable evidence that the common motor carrier maintains the insurance minimums prescribed by the public regulation commission."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE TRANSPORTATION COMMITTEE

SUBSTITUTE FOR HOUSE BILL 1035

CHAPTER 362

CHAPTER 362, LAWS 2003

AN ACT

RELATING TO ASSET BUILDING; ESTABLISHING A PROGRAM THAT ADMINISTERS INDIVIDUAL DEVELOPMENT ACCOUNTS; ENACTING THE INDIVIDUAL DEVELOPMENT ACCOUNT ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--Sections 1 through 12 of this act may be cited as the "Individual Development Account Act".

Section 2. DEFINITIONS.--As used in the Individual Development Account Act:

- A. "account owner" means the person in whose name an individual development account is originally established;
- B. "allowable use" means a use that complies with the provisions of the Individual Development Account Act, or rules adopted pursuant to that act;
- C. "authorized financial institution" means a financial institution authorized by the division to hold and manage individual development accounts and reserve accounts;
- D. "director" means the director of the division;
- E. "division" means the local government division of the department of finance and administration;
- F. "earned income" means wages from employment, payment in lieu of wages, disability payments, tribal distributions or earnings from self-employment or acquired from the provision of services, goods or property, production of goods, management of property or supervision of services;
- G. "eligible individual" means a person who meets the criteria for opening an individual development account;
- H. "financial institution" means a bank, bank and trust, savings bank, savings association or credit union authorized to be a trustee of individual retirement accounts as defined by federal law, the deposits of which are insured by the federal deposit insurance corporation or the national credit union administration;
- I. "individual development account" means an account established and maintained in an authorized financial institution by an eligible individual participating in an individual development account program pursuant to the provisions of the Individual Development Account Act;
- J. "individual development account program" means a program approved by the division to establish and administer individual development accounts and reserve accounts for eligible individuals and to provide financial training required by the division for account owners;
- K. "matching funds" means money deposited in a reserve account to match the withdrawals for allowable uses from an individual development account according to a proportionate formula that complies with rules adopted by the director;

L. "nonprofit organization" means an instrumentality of the state or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation pursuant to Section 501(a) of that code;

M. "program administrator" means a nonprofit organization or tribe that is determined by the director to be eligible to offer an individual development account program;

N. "reserve account" means an account established pursuant to the Individual Development Account Act in an authorized financial institution in which matching funds are maintained and available for payment for a predetermined allowable use following completion of all program requirements by the account owner; and

O. "tribe" means an Indian nation, tribe or pueblo located in whole or in part within New Mexico.

Section 3. INDIVIDUAL DEVELOPMENT ACCOUNTS.--An individual development account may be established for an eligible individual as part of an individual development account program if the written instrument creating the account sets forth the following:

A. the account owner is an eligible individual according to program requirements at the time the account is established;

B. the individual development account is established and maintained in an authorized financial institution;

C. deposits to an individual development account shall be made in accordance with the rules adopted pursuant to the Individual Development Account Act;

D. withdrawals from an individual development account may be only for allowable uses, unless approved by the program administrator as set forth in the rules adopted pursuant to the Individual Development Account Act; and

E. the financial institution in which an individual development account is held shall not be liable for withdrawals made for uses other than allowable uses.

Section 4. ELIGIBLE INDIVIDUALS.--

A. Except as set forth in Subsection B of this section, an eligible individual shall have earned income and shall be:

(1) eighteen years of age or older;

(2) a citizen or legal resident of the United States;

(3) a resident of New Mexico; and

(4) a member of a household with earned income that is no more than two hundred percent of the federal poverty guidelines for the size of the household.

B. A child in foster care is an eligible individual if he:

(1) is sixteen years of age or older;

(2) has earned income that is no more than two hundred percent of the federal poverty guidelines for a family of one, when the child's income is evaluated separately from the income of his foster household;

(3) is a citizen or legal resident of the United States; and

(4) is a resident of New Mexico.

Section 5. RESPONSIBILITIES OF THE DIVISION.--

A. By December 31 following the effective date of the Individual Development Account Act, the director shall adopt rules implementing the provisions of that act.

B. The director shall make an annual report each November to the governor and to an appropriate interim committee of the legislature.

C. The division shall use no more than five percent of the money appropriated to fund the Individual Development Account Act to administer that act.

Section 6. ADVISORY COMMITTEE.--

A. An advisory committee shall be created to provide oversight of the administration of individual development account programs and to suggest possible changes that benefit account owners or improve the effectiveness of the individual development account programs throughout the state.

B. The advisory committee shall meet at least two times in a calendar year to review the implementation of the Individual Development Account Act.

C. The advisory committee shall consist of the lieutenant governor and eight members appointed by the governor to represent the state geographically. The director or his designee shall serve as an ex-officio member of the advisory committee.

D. Members of the advisory committee who are account owners shall receive per diem and mileage pursuant to the Per Diem and Mileage Act and shall

receive no other compensation, perquisite or allowance for their participation on the advisory committee.

E. The division shall provide adequate staff support and administrative services for the advisory committee.

Section 7. ADMINISTRATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

A. An individual development account may be established for an eligible individual, provided the money deposited in the account is expended for allowable uses for the account owner or the account owner's spouse or dependents, unless otherwise approved by the program administrator.

B. An individual development account program shall be approved and monitored by the director for compliance with applicable law, the Individual Development Account Act and rules adopted pursuant to that act.

C. An individual development account program shall establish a reserve account sufficient to meet the matching fund commitments made to all account owners participating in the individual development account program and shall report at least quarterly to each account owner the amount of money available in the reserve account for use by the program administrator to match withdrawals for allowable uses.

D. An individual development account program shall provide financial education and other necessary training pertinent to allowable uses by account owners, develop partnerships with financial institutions, develop matching funds and manage the operations of an individual development account that is established within the program.

E. The division shall adopt rules necessary to implement the Individual Development Account Act.

F. An eligible individual may open an individual development account upon verification by the program administrator that the individual maintains no other individual development account.

G. More than one eligible individual per household may hold an individual development account.

H. An account owner shall complete a financial education program prior to the withdrawal of money from his individual development account.

Section 8. ALLOWABLE USES--WITHDRAWALS FROM INDIVIDUAL DEVELOPMENT ACCOUNTS--FORFEITURE OF MATCHING FUNDS

FROM RESERVE ACCOUNT--LOSS OF ELIGIBLE INDIVIDUAL STATUS.--

A. Allowable uses of the money withdrawn from an individual development account are limited to the following:

(1) expenses to attend an approved post-secondary or vocational educational institution, including payment for tuition, books, supplies and equipment required for courses;

(2) costs to acquire or construct a principal residence as defined in rules adopted pursuant to the Individual Development Account Act that is the first principal residence acquired or constructed by the account owner;

(3) costs of major home improvements or repairs on the home of the account owner;

(4) capitalization or costs to start or expand a business, including capital, plant, equipment, operational and inventory expenses, attorney and accountant fees and other costs normally associated with starting or expanding a business;

(5) acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner; and

(6) in the case of a deceased account owner, amounts deposited by the account owner and held in an individual development account shall be distributed directly to the account owner's spouse, or if the spouse is deceased or there is no spouse, to a dependent or other named beneficiary of the deceased or if the recipient is eligible to maintain the account, the account and matching funds designated for that account from a reserve fund may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

B. If an account owner withdraws money from his individual development account for a use other than an allowable use, he forfeits a proportionate amount of matching funds from the reserve account, as set forth in the agreement between the program administrator and the account owner, unless an amount equal to the withdrawn money is redeposited to his individual development account within the twelve months following the withdrawal.

C. The program administrator may approve a withdrawal by an account owner from his individual development account to be used for a purpose other than an allowable use only for serious emergencies as specified in the rules adopted by the director.

D. At the request of the account owner and with the written approval of the program administrator, amounts may be withdrawn from the account owner's individual

development account and deposited in another individual development account established for an eligible individual who is the account owner's spouse or dependent.

Section 9. APPROVAL OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

A. Annually the division shall solicit a request for proposals from nonprofit organizations or tribes interested in establishing an individual development account program.

B. The director shall determine if an interested nonprofit organization or tribe is eligible to be a program administrator.

C. Eligible program administrators shall develop individual development account programs that are subject to review and approval by the director.

D. The director shall approve an individual development account program submitted by a program administrator before the program establishes individual development accounts or reserve accounts or provides services required by the Individual Development Account Act to eligible individuals.

E. An individual development account and a reserve account may be established only in an authorized financial institution.

F. The director shall monitor all individual development account programs to ensure that individual development accounts and reserve accounts are being operated according to federal law, the provisions of the Individual Development Account Act and rules adopted pursuant to that act.

Section 10. TERMINATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

A. An individual development account program shall be terminated if the:

(1) division determines that the program is not being operated pursuant to the provisions of the Individual Development Account Act or rules adopted pursuant to that act;

(2) provider of the program no longer retains its status as a program administrator; or

(3) program administrator chooses to cease providing an individual development account program.

B. If the director is unable to identify and certify a program administrator to assume the authority to continue to operate a terminated individual development account program, money in a reserve account shall be deposited into the individual development accounts of the account owners for whom the proportionate share of the reserve account was established as of the first day of termination of the program.

Section 11. REPORTING.--A program administrator operating an individual development account program pursuant to the Individual Development Account Act shall report at least annually to the director, as set forth in the rules of the division. Individual account owners shall not be identified in the report. The report shall include:

A. the number of eligible individuals making contributions to individual development accounts;

B. the total money contributed to each individual development account and deposited into each reserve account;

C. the total money in the aggregate deposited in individual development accounts and reserve accounts administered by the individual development account program;

D. the amounts withdrawn from individual development accounts for either allowable uses or for uses other than allowable uses and the amounts withdrawn from reserve accounts;

E. the balances remaining in individual development accounts and reserve accounts; and

F. other information requested by the director to monitor the costs and outcomes of the individual development account program.

Section 12. ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN MEANS-TESTED PROGRAMS.--

A. Money deposited into an individual development account, interest earned on that account and interest and matching funds deposited in a reserve account for the benefit of the account owners shall be disregarded for the purposes of determining eligibility for benefits and for determining benefit amounts pursuant to the New Mexico Works Act.

B. When determining eligibility for benefits and determining benefit amounts due under the food stamp program and medicaid, the human services department shall, pursuant to the authority granted by 7 USCA 2014 (d) and (g),

disregard money deposited into an individual development account, interest earned on that account and interest and matching funds deposited in a reserve account for the benefit of the account owners.

C. Money withdrawn from an individual development account for a purpose other than an allowable use shall be counted as a resource for purposes of the New Mexico Works Act, medicaid unless replaced within the twelve-month allowable time period.

Section 13. Section 27-2B-7 NMSA 1978 (being Laws 1998, Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as amended by Laws 2001, Chapter 295, Section 4 and by Laws 2001, Chapter 326, Section 4) is amended to read:

"27-2B-7. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of federal and state funds and based upon appropriations by the legislature of the available federal temporary assistance for needy families grant made pursuant to the federal act in the following categories:

- (1) cash assistance;
- (2) child care services;
- (3) other services; and
- (4) administrative costs.

The legislature shall determine the actual percentage of each category to be used annually of the federal temporary assistance for needy families grant made pursuant to the federal act.

B. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:

- (1) medicaid;
- (2) food stamps;
- (3) government-subsidized foster care payments if the child for whom the payment is received is also excluded from the benefit group;
- (4) supplemental security income;

- (5) government-subsidized housing or housing payments;
- (6) federally excluded income;
- (7) educational payments made directly to an educational institution;
- (8) government-subsidized child care;
- (9) earned income that belongs to a person seventeen years of age or younger who is not the head of household;
- (10) fifty dollars (\$50.00) of collected child support passed through to the participant by the department's child support enforcement program; ~~and~~
- (11) earned income deposited in an individual development account by a member of the benefit group or money received as matching funds for allowable uses by the owner of the individual development account pursuant to the Individual Development Account Act; and
- (12) other income sources as determined by the department.

C. The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

D. For a benefit group to be eligible to participate:

- (1) gross countable income that belongs to the benefit group must not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group; and
- (2) net countable income that belongs to the benefit group must not equal or exceed the financial standard of need after applying the disregards set out in Paragraphs (1) through (4) of Subsection E of this section.

E. Subject to the availability of state and federal funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned gross income and then subtracting that amount from the benefit group's financial standard of need:

- (1) for the first two years of receiving cash assistance or services, if a participant works over the work requirement rate set by the department pursuant to the New Mexico Works Act, one hundred percent of the income earned by the participant beyond that rate;

(2) for the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works over thirty-five hours per week and the other works over twenty-four hours per week, one hundred percent of income earned by each participant beyond the work requirement rate set by the department;

(3) one hundred twenty-five dollars (\$125) of monthly earned income and one half of the remainder, or for a two-parent family, two hundred twenty-five dollars (\$225) of monthly earned income and one half of the remainder for each parent;

(4) monthly payments made for child care at a maximum of two hundred dollars (\$200) for a child under two years of age and at a maximum of one hundred seventy-five dollars (\$175) for a child two years of age or older;

(5) costs of self-employment income; and

(6) business expenses.

F. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group."

Section 14. Section 27-2B-10 NMSA 1978 (being Laws 1998, Chapter 8, Section 10 and Laws 1998, Chapter 9, Section 10) is amended to read:

"27-2B-10. INDIVIDUAL DEVELOPMENT ACCOUNTS.--A participant may establish an individual development account pursuant to the Individual Development Account Act.

Section 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 35, AS AMENDED

CHAPTER 363

CHAPTER 363, LAWS 2003

AN ACT

RELATING TO GRAND JURIES; CHANGING PROCEDURES FOR GRAND JURY HEARINGS; PROVIDING THE TARGET OF A GRAND JURY HEARING WITH

NOTICE OF HIS STATUS AS A TARGET; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 31-6-3 NMSA 1978 (being Laws 1969, Chapter 276, Section 3) is amended to read:

"31-6-3. CHALLENGE TO GRAND JURY.--Any person held to answer for an offense by grand jury indictment, upon arraignment to the charge therein, by motion to quash the indictment stating with particularity the ground therefor, may challenge the validity of the grand jury. A failure to file such motion is a waiver of the challenge. Grounds that may be presented by such motion are limited to the following:

- A. the grand jury was not selected in accordance with law;
- B. a member of the grand jury returning the indictment was ineligible to serve as a juror;
- C. a member of the grand jury returning the indictment was a witness or is likely to become a witness; or
- D. a member of the grand jury returning the indictment was not qualified to serve due to a conflict of interest, bias, partiality or inability to follow the law."

Section 2. Section 31-6-4 NMSA 1978 (being Laws 1969, Chapter 276, Section 4, as amended) is amended to read:

"31-6-4. TIME AND PLACE FOR HEARING--PRIVACY OF HEARINGS--WITNESSES PERMITTED TO HAVE ATTORNEY PRESENT.--

A. A grand jury shall conduct its hearing during the usual business hours of the court which convened it. Hearings and deliberations may be conducted at any place ordered by the convening judge and provided by the court. Inspections or grand jury views of places under inquiry may be made when directed by the foreman wherever deemed necessary within the county, but no oral testimony or other evidence may be received except during formal private sessions.

B. All deliberations shall be conducted in a private room outside the hearing or presence of any person other than the grand jury members. All taking of testimony shall be in private with no persons present other than the grand jury, the persons required or entitled to assist the grand jury and the attorney, if any, of the target.

C. Persons required or entitled to be present at the taking of testimony before the grand jury include the district attorney and the attorney general and their staffs, interpreters, court reporters, security officers, the witness and an attorney for the target. Security personnel may be present only with special leave of the district court and are neither potential witnesses nor otherwise interested parties in the matter being presented to the grand jury.

D. If a target has his attorney present, the attorney may be present only while the target witness is testifying and may advise the witness but may not speak so that he can be heard by the grand jurors or otherwise participate in the proceedings. At least twenty-four hours before grand jury proceedings begin, the target's attorney may submit proposed questions and exhibits to the district attorney or the attorney general."

Section 3. Section 31-6-5 NMSA 1978 (being Laws 1969, Chapter 276, Section 5, as amended) is amended to read:

"31-6-5. RETURN OF INDICTMENTS.--Indictments shall be returned by the grand jury within twenty-four hours following the day when the indictment is voted. Indictments shall not name persons as unindicted coconspirators. Indictments may be filed and prosecution and trial had thereon without regard to court terms. No-bills shall be sealed and filed with the district court clerk. Upon application to the court by the state for good cause shown, or upon request by the target, the court may release a sealed no-bill."

Section 4. Section 31-6-7 NMSA 1978 (being Laws 1969, Chapter 276, Section 7, as amended) is amended to read:

"31-6-7. ASSISTANCE FOR GRAND JURY--REPORT.--

A. The district court shall assign necessary personnel to aid the grand jury in carrying out its duties. The district attorney or his assistants shall attend the grand jury, examine witnesses and prepare indictments, reports and other undertakings of the grand jury.

B. When engaged in the investigation of an offense over which he has jurisdiction, the attorney general or his assistants may attend a grand jury, examine witnesses and prepare indictments, reports and other undertakings of the grand jury.

C. When a grand jury is convened in response to a citizens' grand jury petition pursuant to Article 2, Section 14 of the constitution of New Mexico, the district attorney or his assistants, unless otherwise disqualified, shall attend and conduct the grand jury.

D. A prosecuting attorney attending a grand jury and all grand jurors shall conduct themselves in a fair and impartial manner at all times during grand jury proceedings.

E. A grand jury, in its discretion, may make a formal, written report as to the condition and operation of any public office or institution it has investigated. The report shall not charge any public officer or other person with willful misconduct, corruption or malfeasance unless an indictment or accusation for removal from public office is also returned by the grand jury. The right of every person to be properly charged, face his accusers and be heard in his defense in open court shall not be circumvented by the report."

Section 5. Section 31-6-11 NMSA 1978 (being Laws 1969, Chapter 276, Section 11, as amended) is amended to read:

"31-6-11. EVIDENCE BEFORE GRAND JURY.--

A. Evidence before the grand jury upon which it may find an indictment is that which is lawful, competent and relevant, including the oral testimony of witnesses under oath and any documentary or other physical evidence exhibited to the jurors. The Rules of Evidence shall not apply to a grand jury proceeding. The sufficiency of the evidence upon which an indictment is returned shall not be subject to review absent a showing of bad faith on the part of the prosecuting attorney assisting the grand jury.

B. It is the duty of the grand jury to weigh all the evidence submitted to it, and when it has reason to believe that other lawful, competent and relevant evidence is available that would disprove or reduce a charge or accusation or that would make an indictment unjustified, then it shall order the evidence produced. At least twenty-four hours before grand jury proceedings begin, the target or his counsel may alert the grand jury to the existence of evidence that would disprove or reduce an accusation or that would make an indictment unjustified, by notifying the prosecuting attorney who is assisting the grand jury in writing regarding the existence of that evidence.

C. A district attorney shall use reasonable diligence to notify a person in writing that the person is the target of a grand jury investigation. Unless the district judge presiding over the grand jury determines by clear and convincing evidence that providing notification may result in flight by the target, result in obstruction of justice or pose a danger to another person, the target of a grand jury investigation shall be notified in writing of the following information:

(1) that he is the target of an investigation;

(2) the nature of the alleged crime being investigated and the date of the alleged crime and any applicable statutory citations;

(3) the target's right to testify no earlier than four days after receiving the target notice if he is in custody, unless for good cause the presiding judge orders a different time period or the target agrees to testify sooner;

(4) the target's right to testify no earlier than ten days after receiving the target notice if he is not in custody, unless for good cause the presiding judge orders a different time period or the target agrees to testify sooner;

(5) the target's right to choose to remain silent; and

(6) the target's right to assistance of counsel during the grand jury investigation."

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 109, AS AMENDED

CHAPTER 364

CHAPTER 364, LAWS 2003

AN ACT

RELATING TO SALE OF TOBACCO PRODUCTS; PREVENTING YOUTH ACCESS TO TOBACCO PRODUCTS BY PROHIBITING SELF-SERVICE DISPLAYS AND REQUIRING DIRECT, FACE-TO-FACE SALES OF TOBACCO PRODUCTS; LIMITING VENDING MACHINE SALES; EXEMPTING CERTAIN SALES.

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

Section 1. Section 30-49-7 NMSA 1978 (being Laws 1993, Chapter 244, Section 7) is amended to read:

"30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF TOBACCO PRODUCTS.--

A. Except as provided in Subsections B and C of this section:

(1) a person shall not sell tobacco products at a retail location in New Mexico by any means other than a direct, face-to-face exchange between the customer and the seller or the seller's employee; and

(2) a person selling goods at a retail location in New Mexico shall not use a self-service display for tobacco products. As used in this subsection, "self-service display" means a display to which the public has access without the assistance of the seller or the seller's employee.

B. Tobacco products may be sold by vending machines in the following locations only:

(1) in locations not held open to the public, including controlled areas within factories, businesses and offices;

(2) in locations in which the vending machine is equipped with a remote-controlled lock-out device; or

(3) in age-controlled locations where minors are not permitted unless accompanied by a parent or guardian.

C. The provisions of this section do not apply to written, telephonic or electronic sales."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2004.

HOUSE BILL 136, AS AMENDED

CHAPTER 365

CHAPTER 365, LAWS 2003

AN ACT

RELATING TO WATER; AMENDING THE WATER PROJECT FINANCE ACT TO PROVIDE FOR CREATION OF A DROUGHT STRIKE TEAM; PROVIDING FOR WATER USE EFFICIENCY AS A CRITERION FOR WATER TRUST FUND FINANCING.

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

Section 1. Section 72-4A-5 NMSA 1978 (being Laws 2001, Chapter 164, Section 5) is amended to read:

"72-4A-5. BOARD--DUTIES.--The board shall:

A. adopt rules governing terms and conditions of grants or loans recommended by the board for appropriation by the legislature from the water project fund, giving priority to projects that have urgent needs, that have been identified for implementation of a completed regional water plan that is accepted by the interstate stream commission and that have matching contributions from federal or local funding sources;

B. authorize qualifying water projects to the authority that are for:

(1) storage, conveyance or delivery of water to end users;

(2) implementation of federal Endangered Species Act of 1973 collaborative programs;

(3) restoration and management of watersheds;

(4) flood prevention; or

(5) water conservation; and

C. create a drought strike team to coordinate responses to emergency water shortages caused by drought conditions."

Section 2. Section 72-4A-7 NMSA 1978 (being Laws 2001, Chapter 164, Section 7) is amended to read:

"72-4A-7. CONDITIONS FOR GRANTS AND LOANS.--

A. Grants and loans shall be made only to state agencies or to political subdivisions that:

(1) agree to operate and maintain the water project so that it will function properly over the structural and material design life, which shall not be less than twenty years;

(2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;

(3) provide written assurance signed by an attorney or provide a title insurance policy that the political subdivision has proper title, easements and rights of way to the property upon or through which the water project proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the board to ensure sufficient revenues to operate and maintain the water project for its useful life and to repay the loan;

(5) agree to properly maintain financial records and to conduct an audit of the project's financial records; and

(6) agree to pay costs of originating grants and loans as determined by rules adopted by the board.

B. Plans and specifications for a water project shall be approved by the authority before grant or loan disbursements to pay for construction costs are made to a state agency or political subdivision. Plans and specifications for a water project shall incorporate available technologies and operational design for water use efficiency.

C. Grants and loans shall be made only for eligible items, which include:

(1) to match federal and local cost shares;

(2) engineering feasibility reports;

(3) contracted engineering design;

(4) inspection of construction;

(5) special engineering services;

(6) environmental or archaeological surveys;

(7) construction;

(8) land acquisition;

(9) easements and rights of way; and

(10) legal costs and fiscal agent fees."

CHAPTER 366

CHAPTER 366, LAWS 2003

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES LICENSING; CHANGING THE REQUIREMENTS FOR ELECTRICAL CERTIFICATES OF COMPETENCE.

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

Section 1. Section 60-13-38 NMSA 1978 (being Laws 1967, Chapter 199, Section 41, as amended) is amended to read:

"60-13-38. CERTIFICATES OF COMPETENCE--EXAMINATION--
JOURNEYMEN.--

A. A person shall not engage in the occupation or trade of journeyman unless he holds a certificate of competence issued by the division for the occupation or trade in which he desires to engage.

B. The categories for certificates of competence are: journeyman electrician, journeyman plumber, journeyman gas fitter, journeyman pipe fitter, journeyman sheet metal worker, journeyman boiler operator, residential wireman and journeyman welder working on pipelines, collection lines or compressor stations.

C. An applicant for a certificate of competence shall be required to take an examination approved and adopted by the division as to his knowledge of the orders and rules governing the occupation or trade for which a certificate is sought, and as to his technical knowledge and ability pertaining to his particular trade. The examination may be oral, written or demonstrative or any combination thereof, as required by rules of the commission.

D. The division shall issue a certificate of competence to any journeyman welder working on pipelines, collection lines or compressor stations who shows evidence of having satisfactorily completed an examination administered by an independent testing organization or public utility employing engineers registered with the state, such examination meeting the minimum pipeline safety standards set by the public regulation commission.

E. Applications for certificates of competence shall be in the form and shall contain such information and attachments as the division prescribes.

F. The division shall establish a reasonable fee for any examination or issuance of certificate of competence.

G. A person is not eligible to take an examination for a certificate of competence unless he has had two years' experience in the occupation or trade for which a certificate of competence is sought, or the equivalent thereof as determined by the commission, or has successfully completed a course in the trade approved by the vocational education division of the state department of public education.

H. Employment of an apprentice working under the direct supervision of a certified journeyman is not prohibited by the Construction Industries Licensing Act.

I. A person is eligible to take an examination for a journeyman electrician certificate of competence after at least:

(1) four years of accredited training in the electrical trade;

(2) four years of apprenticeship in the electrical trade;

(3) four years of practical experience in the electrical trade, of which two years are in the commercial trade, industrial trade or the equivalent as determined by the commission; or

(4) successfully completing an electrical trade program approved by the vocational education division of the state department of public education and two years of practical experience in the commercial electrical trade.

J. Continuing education requirements for a journeyman electrician shall include at least sixteen hours of continuing education in every three-year period between national electrical code updates, of which eight hours are code change instructions and eight hours are other industry-related instruction. All continuing education curricula and instructors shall be approved by the commission based on recommendations by the electrical bureau.

K. A certificate of competence shall not be renewed until a complete application for renewal has been received by the division. Proof of completion of the continuing education requirements shall be submitted to the division with the application for renewal of certificate of competence. An application for renewal that is not accompanied by proof of completion of the continuing education requirements is incomplete and shall not be processed. The continuing education requirements in this subsection shall only apply to a journeyman electrician with the designation "EE-98J" or "JE98". This does not apply to EE98.

L. A person is eligible to take an examination for a residential wireman's certificate of competence after at least:

(1) two years of accredited training or apprenticeship in the electrical trade;

(2) two years of practical experience in wiring residential dwellings;
or

(3) successfully completing a course in the trade approved by the vocational education division of the state department of public education and one year of practical experience in wiring residential dwellings.

M. The provisions of Subsections I and L of this section do not apply to a person who was enrolled as a full-time student before June 20, 2003 in an electrical trade program approved by the vocational education division of the state department of public education."

HOUSE BILL 279, AS AMENDED

CHAPTER 367

CHAPTER 367, LAWS 2003

AN ACT

RELATING TO HIGHER EDUCATION; CREATING THE TECHNOLOGY ENHANCEMENT FUND; PROVIDING MATCHING FUNDS TO RESEARCH UNIVERSITIES FOR INNOVATIVE APPLIED RESEARCH TO CREATE NEW PRODUCTS AND PRODUCTION PROCESSES.

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

Section 1. TECHNOLOGY ENHANCEMENT FUND CREATED-- ALLOCATIONS--APPLICATION REVIEW PANELS.--

A. The "technology enhancement fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests. Money in the fund shall not revert at the end of any fiscal year. The fund shall be administered by the commission on higher education. Money in the fund shall be used to provide matching funds to state research universities to support innovative applied research that advances knowledge and creates new products and production processes in the fields of agriculture, biotechnology, biomedicine energy, materials science, microelectronics, water resources, aerospace, telecommunications, manufacturing science and similar research areas. Money from the fund shall be expended on warrants of the secretary of finance and administration upon vouchers signed by the executive director of the commission on higher education or the executive director's authorized representative.

B. Grants from the fund are available to state research universities that are conducting collaborative research with corporate and nonprofit organizations. A state research university may apply for a grant from the fund in accordance with rules promulgated by the commission on higher education. Allocations from the fund shall be based on a competitive process with applications reviewed by a panel of scientific and business experts established by the commission. The review panel shall judge proposals based on excellence in research design and possible innovation in cross-disciplinary, multi-campus and higher education-industry research collaboration. The review panel may determine new research areas.

C. To apply for a grant, a state research university must have equal or greater matching funds for the proposal from sources other than the state.

HOUSE BILL 391

CHAPTER 368

CHAPTER 368, LAWS 2003

AN ACT

RELATING TO HIGHER EDUCATION; CREATING THE WORK FORCE SKILLS DEVELOPMENT FUND; PROVIDING MATCHING FUNDS FOR COMMUNITY COLLEGE PROGRAMS.

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

Section 1. WORK FORCE SKILLS DEVELOPMENT FUND CREATED-- -ALLOCATIONS--APPLICATION REVIEW PANELS.--

A. The "work force skills development fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests. Money in the fund shall not revert at the end of any fiscal year. The fund shall be administered by the commission on higher education and money in the fund is appropriated to the commission to provide matching funds to community colleges for the development, expansion and support of broad-based entry-level high-skills training programs. Money from the fund shall be expended on warrants of the secretary of finance and administration upon vouchers signed by the executive director of the commission on higher education or his authorized representative.

B. Individual community colleges or a consortium of community colleges may apply for matching grants from the work force skills development fund in accordance with rules promulgated by the commission on higher education. Allocations

from the fund shall be based on a competitive process with applications reviewed by a panel of education, business and labor experts established by the commission. To apply for a grant, a community college or consortium must have equal or greater matching funds for the proposal from sources other than the state.

HOUSE BILL 394

CHAPTER 369

CHAPTER 369, LAWS 2003

AN ACT

RELATING TO WATER; ALLOWING THE CREATION OF SPECIAL WATER USERS' ASSOCIATIONS; AUTHORIZING LEASING OF ALLOTMENTS OF WATER FROM IRRIGATION DISTRICTS ORGANIZED PURSUANT TO CHAPTER 73, ARTICLE 10 NMSA 1978; ALTERING PROCEDURES FOR CHANGES OF PLACE AND PURPOSE OF USE OF LEASED WATER; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 72-1-9 NMSA 1978 (being Laws 1985, Chapter 198, Section 1, as amended) is amended to read:

"72-1-9. MUNICIPAL, COUNTY, MEMBER-OWNED COMMUNITY WATER SYSTEMS AND STATE UNIVERSITY WATER DEVELOPMENT PLANS-- PRESERVATION OF MUNICIPAL, COUNTY AND STATE UNIVERSITY WATER SUPPLIES.--

A. It is recognized by the state that it promotes the public welfare and the conservation of water within the state for municipalities, counties, state universities, member-owned community water systems, special water users' associations and public utilities supplying water to municipalities or counties to plan for the reasonable development and use of water resources. The state further recognizes the state engineer's administrative policy of not allowing municipalities, member-owned community water systems, counties and state universities to acquire and hold unused water rights in an amount greater than their reasonable needs within forty years.

B. Municipalities, counties, state universities, member-owned community water systems, special water users' associations and public utilities supplying water to municipalities or counties shall be allowed a water use planning period not to exceed forty years, and water rights for municipalities, counties, state universities, member-

owned community water systems, special water users' associations and public utilities supplying water to such municipalities or counties shall be based upon a water development plan the implementation of which shall not exceed a forty-year period from the date of the application for an appropriation or a change of place or purpose of use pursuant to a water development plan or for preservation of a municipal, county, member-owned community water system or state university water supply for reasonably projected additional needs within forty years."

Section 2. Section 72-6-3 NMSA 1978 (being Laws 1967, Chapter 100, Section 3, as amended) is amended to read:

"72-6-3. OWNER MAY LEASE USE OF WATER.--

A. An owner may lease to any person all or any part of the water use due him under his water right, and the owner's water right shall not be affected by the lease of the use. The use to which the owner is entitled under his right shall, during the exercise of the lease, be reduced by the amount of water so leased. Upon termination of the lease, the water use and location of use subject to the lease shall revert to the owner's original use and location of use.

B. The lease may be effective for immediate use of water or may be effective for future use of the water covered by the lease; however, the lease shall not be effective to cumulate water from year to year or to substantially enlarge the use of the water in such manner that it would injure other water users. The lease shall not toll any forfeiture of water rights for nonuse, and the owner shall not, by reason of the lease, escape the forfeiture for nonuse prescribed by law; provided, however, that the state engineer shall notify both the owner and the lessee of declaration of nonuser as provided in Sections 72-5-28 and 72-12-8 NMSA 1978. The initial or any renewal term of a lease of water use shall not exceed ten years, except as provided in Subsection C of this section.

C. A water use may be leased for forty years by municipalities, counties, state universities, special water users' associations, public utilities supplying water to municipalities or counties and member-owned community water systems as lessee and shall be entitled to the protection of the forty-year water use planning period as provided in Section 72-1-9 NMSA 1978. A water use deriving from an acequia or community ditch organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, whether owned by a water right owner under the acequia or community ditch or by the acequia or community ditch may be leased for a term not to exceed ten years."

Section 3. Section 72-6-5 NMSA 1978 (being Laws 1967, Chapter 100, Section 5, as amended) is amended to read:

"72-6-5. APPROVAL.--

A. The state engineer shall approve the application if the applicant has reasonably shown that his proposed use and location of use is a beneficial use and:

(1) will not impair any existing right to a greater degree than such right is, or would be, impaired by the continued use and location of use by the owner; and

(2) will not be contrary to the conservation of water within the state or detrimental to the public welfare of the state.

B. In the case of annual allotments of project water leased to a special water users' association from an irrigation district organized pursuant to Chapter 73, Article 10 NMSA 1978, if the state engineer determines that the proposed changes in place and purpose of use and point of diversion comply with the rules established pursuant to Subsection G of Section 73-10-48 NMSA 1978, the board of directors of the irrigation district may approve the application in accordance with the provisions of Section 73-10-48 NMSA 1978."

Section 4. Section 72-6-6 NMSA 1978 (being Laws 1967, Chapter 100, Section 6) is amended to read:

"72-6-6. APPLICATION--NOTICE--PROTEST--HEARING.--

A. Upon the filing of an application by a lessee, the state engineer shall cause a notice of the filing to be published once a week for three consecutive weeks in a newspaper of general circulation in the county in which the water right is situated.

B. Any owner who believes his water rights will be adversely affected by the granting of the application may file a protest. The protest shall be specific as to how the granting of the application will adversely affect his water rights. The protest shall be filed in writing with the state engineer and a copy sent to the applicant by certified mail within ten days after the last publication of notice of application.

C. If a protest is filed, the state engineer shall hold a hearing on the granting of the application, and the applicant and protestants shall be notified by the state engineer as to the date and place of the hearing.

D. If no objections are filed, the state engineer may grant the application without hearing. If no objections are filed and the state engineer denies the application, the state engineer shall hold a hearing if requested to do so by the applicant. The request shall be filed with the state engineer within ten days after the denial of the application.

E. If the state engineer grants the application but allows the applicant to use less water than the amount of water the owner would be allowed to use, the state engineer shall hold a hearing on the matter if requested to do so by the applicant. The

request shall be filed with the state engineer within ten days after the granting of the application.

F. In a hearing before the state engineer, a full record and transcript of the proceeding shall be kept by him.

G. The provisions of this section do not apply to leases approved pursuant to Section 73-10-48 NMSA 1978."

Section 5. Section 73-10-48 NMSA 1978 (being Laws 2000, Chapter 73, Section 1) is repealed and a new Section 73-10-48 NMSA 1978 is enacted to read:

"73-10-48. SPECIAL WATER USERS' ASSOCIATIONS--LEASE OF ALLOTMENTS OF IRRIGATION DISTRICT WATER--CHANGE OF PLACE AND PURPOSE OF USE OF LEASED WATER RIGHTS--CHANGE OF POINT OF DIVERSION OF WATER RIGHTS--APPROVAL PROCESS.--

A. As used in this section:

(1) "annual allotment of project water" means that portion of the pro rata share of water, determined by the irrigation district to be available to assessed acreage within the district each year, for which an adjudication subfile order has been entered or an offer of judgment has been irrevocably accepted by the landowner and the state;

(2) "irrigation district" means an irrigation district organized pursuant to Chapter 73, Article 10 NMSA 1978; and

(3) "public utility" means a utility that supplies water to municipalities or counties.

B. A municipality, county, state university, member-owned community water system or public utility within New Mexico may establish a "special water users' association" to lease the use of water from landowners in an irrigation district if:

(1) the municipality, county, state university, member-owned community water system or public utility supplies or proposes to supply water for municipal and industrial uses, at least a portion of which is supplied to persons within the boundaries of an irrigation district; and

(2) the irrigation district and the state engineer approve of the establishment of the association.

C. The interstate stream commission may establish a special water users' association with the approval of the irrigation district.

D. A special water users' association may lease the use of the annual allotment of project water directly from a member of the irrigation district or through the irrigation district. The association shall appear as record owner of lands from which water is leased during the term of the lease on the irrigation district's assessment rolls for the purpose of irrigation district annual assessments, levies, tolls, charges and other fees for annual allotments of project water leased by the association, which shall be paid by the association to the irrigation district during the term of the lease.

E. The irrigation district may:

(1) consolidate assessments of district members leasing to a special water users' association and assess the association for the total assessed acreage of those district members;

(2) coordinate the delivery of leased annual allotments of project water to the association;

(3) make assessments and levies on lands with appurtenant water rights within the association;

(4) charge reasonable administrative fees to the association; and

(5) adopt rules to carry out the provisions of this section.

F. An irrigation district may approve a lease of an annual allotment of project water by a special water users' association for:

(1) a change in the place of use or point of diversion of the leased water within or without the boundaries of the district; or

(2) a change in the purpose of use of the leased water within or without the boundaries of the district for:

(a) a water treatment plant to supply water for municipal and industrial uses; or

(b) the purpose of meeting interstate compact delivery requirements of project water to Texas.

G. The state engineer shall adopt rules establishing criteria governing changes in place or purpose of use or point of diversion of annual allotments of project water for determining the areas of use and purposes of use of water leased by a special water users' association. The rules shall ensure that the proposed changes will be a beneficial use, will not result in an increase in net depletions of water, will not impair existing water rights, are not contrary to the conservation of water within the state and are not detrimental to the public welfare of the state.

H. The special water users' association shall submit to the state engineer on a form prescribed by the state engineer all information required to determine whether the association and its proposed changes in place and purpose of use and point of diversion of water are in compliance with the state engineer's rules. If the state engineer determines that the proposed changes are in conformity with the rules, the association shall be notified and the state engineer shall publish, in a newspaper of general circulation in the county in which the changes are located at least once a week for three consecutive weeks, the application and notice that the proposed changes in place and purpose of use and point of diversion conform to the state engineer's rules. Objections by a person owning water rights within the district's boundaries and whose water rights may be impaired by the state engineer's decision may be filed with the state engineer and served by certified mail within ten days after the last publication of the notice. The state engineer shall issue a decision in answer to an objection within thirty days of the filing of the objection. The protestant may appeal that decision directly to the district court within thirty days of notice by certified mail of the state engineer's decision. Appeals to the district court shall be limited to review of whether the state engineer's decision was made in accordance with the rules, and a jury trial shall not be allowed. Once the state engineer's approval of the application is final, the irrigation district may then approve the changes authorized in Subsection F of this section pursuant to the irrigation district approval process described in Subsection I of this section.

I. The board of directors of the irrigation district shall publish notice at least once a week for three consecutive weeks, in a newspaper of general circulation published within the county where the office of the irrigation district is located, of the board's intention to consider a resolution to allow the lease of the use of annual allotments of project water. The notice shall indicate the owners and location of lands from which annual allotments of project water will be leased and any change in point of diversion, place or purpose of use of that water and the period of the lease. The board may approve the lease if it finds it to be in the best interest of the district. Members of the district whose water rights may be affected by the lease may protest at the meeting at which the resolution is being considered. The board shall take formal action upon the resolution and shall give notice to all protestants of the board's decision. A protestant may appeal to the district court from any action taken by the board upon the resolution. An appeal shall be filed with the court and notice served on the parties within ten days of receipt of notice of the board's adoption or rejection of the resolution. The appeal shall be on the record of the hearing before the irrigation district board and a right of trial by jury shall not be allowed."

Section 6. A new section of Chapter 73, Article 10 NMSA 1978 is enacted to read:

"SPECIAL WATER USERS' ASSOCIATION--CERTIFICATE OF ORGANIZATION.--The organizers of a special water users' association shall execute and file with the state engineer a certificate setting forth:

A. the name of the association; provided that a name shall not be assumed that is in use by another association or corporation in this state, or that is so nearly similar as to lead to uncertainty or confusion;

B. the names of the entities forming the association;

C. the location of the association's principal office in this state, the name and address of its registered agent, the county or counties in which it will operate and a general description of the areas it will serve;

D. the purposes of the association and the purposes of the use of water leased by the association;

E. the plan for providing funds or means for the acquisition, construction, improvement and maintenance of its works and for its necessary expenses;

F. the period of duration of the association;

G. the number of and manner of selecting the board of directors, trustees or governing board of the association, and the name of the persons who shall serve as such until their successors are selected;

H. the name of the irrigation district from which the association will be leasing the use of water; and

I. any provision, not inconsistent with the laws of this state, that the organizers may choose to insert for the regulation and conduct of the business and affairs of the association, for enlarging or changing the scope of its operations, for collecting the necessary funds for expenses and purposes of the association, for defining or limiting its powers and for its dissolution and the distribution or other disposition of its property."

Section 7. A new section of Chapter 73, Article 10 NMSA 1978 is enacted to read:

"SPECIAL WATER USERS' ASSOCIATION--ORGANIZATIONAL STATUS--OFFICERS.--

A. Upon the filing of the certificate of organization, by duly adopted resolution, with the state engineer and a copy with the county clerk of the county or city, as appropriate, where the special water users' association is formed, the entities so associating shall constitute a body corporate by the name set forth in the certificate and by that name may sue and be sued and shall have the capacity to make contracts; acquire, hold, enjoy, dispose of and convey property real and personal; and do any other act or thing necessary or proper for carrying out the purposes of the association.

B. An association may have officers or agents chosen or appointed in a manner and for terms as may be provided by the bylaws. Vacancies occurring among officers or among the board of directors, trustees or governing board shall be filled as provided by the bylaws or, in the absence of such provision, by the directors, trustees or governing board."

Section 8. SEVERABILITY.--If any part or application of a provision of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 9. TEMPORARY PROVISION.--A lease of project water by a municipal water users' association existing on the effective date of this act may be transferred to a special water users' association if the lease is in accordance with, or is amended to accord with, the provisions of this act.

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 403, AS AMENDED

CHAPTER 370

CHAPTER 370, LAWS 2003

AN ACT

RELATING TO RETIREMENT; PERMITTING RETIRED VOLUNTEER FIREFIGHTERS RECEIVING BENEFITS PURSUANT TO THE VOLUNTEER FIREFIGHTERS RETIREMENT ACT TO ALSO RECEIVE BENEFITS PURSUANT TO RETIREMENT PLANS ESTABLISHED BY THE STATE OR ITS POLITICAL SUBDIVISIONS.

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

Section 1. Section 10-11A-1 NMSA 1978 (being Laws 1983, Chapter 263, Section 1) is amended to read:

"10-11A-1. SHORT TITLE.--Chapter 10, Article 11A NMSA 1978 may be cited as the "Volunteer Firefighters Retirement Act"."

Section 2. Section 10-11A-2 NMSA 1978 (being Laws 1983, Chapter 263, Section 2) is amended to read:

"10-11A-2. DEFINITIONS.--As used in the Volunteer Firefighters Retirement Act:

- A. "association" means the public employees retirement association;
- B. "board" means the retirement board of the association;
- C. "fire department" means any volunteer fire department certified by the fire marshal bureau of the insurance division of the public regulation commission;
- D. "fund" means the volunteer firefighters retirement fund; and
- E. "member" means any volunteer nonsalaried firefighter who is listed as an active member on the rolls of a fire department and whose first year of service credit was accumulated during or after the year he attained the age of sixteen."

HOUSE APPROPRIATIONS AND FINANCE

COMMITTEE SUBSTITUTE FOR HOUSE

BILLS 408, 660 AND 730

CHAPTER 371

CHAPTER 371, LAWS 2003

AN ACT

RELATING TO STATE BUILDINGS; AUTHORIZING RENOVATIONS AND MAINTENANCE AND THE DEVELOPMENT OF PERMANENT EXHIBITS AT STATE MUSEUMS AND MONUMENTS PURSUANT TO THE STATE OFFICE BUILDING ACQUISITION BONDING ACT; RENAMING THAT ACT AND THE STATE OFFICE BUILDING BONDING FUND.

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

Section 1. Section 6-21C-1 NMSA 1978 (being Laws 2001, Chapter 199, Section 1) is amended to read:

"6-21C-1. SHORT TITLE.--Chapter 6, Article 21C NMSA 1978 may be cited as the "State Building Bonding Act"."

Section 2. Section 6-21C-3 NMSA 1978 (being Laws 2001, Chapter 199, Section 3) is amended to read:

"6-21C-3. DEFINITIONS.--As used in the State Building Bonding Act:

A. "acquiring" or "acquisition" includes acquiring or acquisition by purchase, construction or renovation; and

B. "building bonds" means state office building tax revenue bonds or state museum tax revenue bonds."

Section 3. Section 6-21C-4 NMSA 1978 (being Laws 2001, Chapter 199, Section 4) is amended to read:

"6-21C-4. NEW MEXICO FINANCE AUTHORITY SHALL ISSUE BUILDING BONDS--APPROPRIATION OF PROCEEDS.--

A. The New Mexico finance authority is authorized to issue and sell revenue bonds, known as "state office building tax revenue bonds", payable solely from the state building bonding fund, in compliance with the State Building Bonding Act for the purpose of acquiring state office buildings when the acquisition has been reviewed by the capitol buildings planning commission and has been authorized by legislative act and the director of the property control division of the general services department has certified the need for the issuance of the bonds.

B. The New Mexico finance authority is authorized to issue and sell revenue bonds, known as "state museum tax revenue bonds", payable solely from the state building bonding fund, in compliance with the State Building Bonding Act for the purpose of renovating and maintaining existing structures and developing permanent exhibits at state museums and monuments when the renovation, maintenance or exhibit development has been authorized by legislative act, the state cultural affairs officer has certified the need for the issuance of the bonds and, in the case of a renovation or maintenance of an existing structure, the renovation or maintenance has been reviewed by the capitol buildings planning commission.

C. The net proceeds from the state office building tax revenue bonds are appropriated to the property control division of the general services department for the purpose of acquiring state office buildings, the acquisition of which shall be consistent with the State Building Bonding Act and the authorizing legislation.

D. The net proceeds from the state museum tax revenue bonds are appropriated to the office of cultural affairs for the purpose of renovating and maintaining existing structures and developing permanent exhibits at state museums and monuments, the renovation, maintenance or exhibit development of which shall be consistent with the State Building Bonding Act and the authorizing legislation."

Section 4. Section 6-21C-5 NMSA 1978 (being Laws 2001, Chapter 199, Section 5) is amended to read:

"6-21C-5. STATE BUILDING BONDING FUND CREATED--MONEY IN THE FUND PLEDGED.--

A. The "state building bonding fund" is created as a special fund within the New Mexico finance authority. The fund shall be administered by the New Mexico finance authority as a special account. The fund shall consist of money appropriated and transferred to the fund and gross receipts tax revenues distributed to the fund by law. Earnings of the fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall remain in the fund, except as provided in this section.

B. Money in the state building bonding fund is pledged for the payment of principal and interest on all building bonds issued pursuant to the State Building Bonding Act. Money in the fund is appropriated to the New Mexico finance authority for the purpose of paying debt service, including redemption premiums, on the building bonds and the expenses incurred in the issuance, payment and administration of the bonds.

C. On the last day of January and July of each year, the New Mexico finance authority shall estimate the amount needed to make debt service and other payments during the next twelve months from the state building bonding fund on the building bonds issued pursuant to the State Building Bonding Act plus the amount that may be needed for any required reserves. The New Mexico finance authority shall transfer to the general fund any balance in the state building bonding fund above the estimated amounts.

D. Any balance remaining in the state building bonding fund shall be transferred to the general fund upon certification by the New Mexico finance authority that:

(1) the director of the property control division of the general services department, in the case of state office building tax revenue bonds, and the state cultural affairs officer, in the case of state museum tax revenue bonds, and the New Mexico finance authority have agreed that the building bonds issued pursuant to the State Building Bonding Act have been retired, that no additional obligations of the state building bonding fund exist and that no additional expenditures from the fund are necessary; or

(2) a court of jurisdiction has ruled that the building bonds have been retired, that no additional obligations of the state building bonding fund exist and that no additional expenditures from the fund are necessary.

E. The building bonds issued pursuant to the State Building Bonding Act shall be payable solely from the state building bonding fund or, with the approval of the

bondholders, such other special funds as may be provided by law and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. No breach of any contractual obligation incurred pursuant to that act shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the state building bonding fund shall be used only for the purposes specified in this section and pledged first to pay the debt service on the building bonds issued pursuant to the State Building Bonding Act. The state further pledges that any law authorizing the distribution of taxes or other revenues to the state building bonding fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the state building bonding fund is dedicated as provided in this section."

Section 5. Section 6-21C-6 NMSA 1978 (being Laws 2001, Chapter 199, Section 6) is amended to read:

"6-21C-6. AUTHORITY TO REFUND BONDS.--The New Mexico finance authority may issue and sell at public or private sale building bonds to refund outstanding building bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof, when, in its opinion, such action will be beneficial to the state."

Section 6. Section 6-21C-7 NMSA 1978 (being Laws 2001, Chapter 199, Section 7) is amended to read:

"6-21C-7. BUILDING BONDS--FORM--EXECUTION.--

A. The New Mexico finance authority, except as otherwise specifically provided in the State Building Bonding Act, shall determine at its discretion the terms, covenants and conditions of building bonds, including, but not limited to, date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering the general and technical aspects of the issuance of the bonds.

B. The building bonds shall be in such form as the New Mexico finance authority may determine, and successive issues shall be identified by alphabetical, numerical or other proper series designation.

C. Building bonds shall be signed and attested by the secretary of the New Mexico finance authority and shall be executed with the facsimile signature of the chairman of the New Mexico finance authority and the facsimile seal of the New Mexico finance authority, except for bonds issued in book entry or similar form without the delivery of physical securities. Any interest coupons attached to the bonds shall bear

the facsimile signature of the secretary of the New Mexico finance authority, which officer, by the execution of the bonds, shall adopt as his own signature the facsimile thereof appearing on the coupons. Except for bonds issued in book entry or similar form without the delivery of physical securities, the Uniform Facsimile Signature of Public Officials Act shall apply, and the New Mexico finance authority shall determine the manual signature to be affixed on the bonds."

Section 7. Section 6-21C-8 NMSA 1978 (being Laws 2001, Chapter 199, Section 8) is amended to read:

"6-21C-8. PROCEDURE FOR SALE OF BUILDING BONDS.--

A. Building bonds shall be sold by the New Mexico finance authority at such times and in such manner as the authority may elect, consistent with the need of the property control division of the general services department or the office of cultural affairs, either at private sale for a negotiated price or to the highest bidder at public sale for cash at not less than par and accrued interest.

B. In connection with any public sale of building bonds, the New Mexico finance authority shall publish a notice of the time and place of sale in a newspaper of general circulation in the state and also in a recognized financial journal outside the state. Such publication shall be made once each week for two consecutive weeks prior to the date fixed for such sale, the last publication to be two business days prior to the date of sale. Such notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which sealed bids therefor shall be received. All bids, except that of the state, shall be accompanied by a deposit of two percent of the principal amount of the bonds. Deposits of unsuccessful bidders shall be returned upon rejection of the bid. At the time and place specified in such notice, the New Mexico finance authority shall open the bids in public and shall award the bonds, or any part thereof, to the bidder or bidders offering the best price. The New Mexico finance authority may reject any or all bids and readvertise.

C. The New Mexico finance authority may sell a building bond issue, or any part thereof, to the state or to one or more investment bankers or institutional investors at private sale."

Section 8. Section 6-21C-9 NMSA 1978 (being Laws 2001, Chapter 199, Section 9) is amended to read:

"6-21C-9. STATE BUILDING BONDING ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE LEGAL INVESTMENTS.--

A. The State Building Bonding Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of building bonds, which bonds shall have all the qualities of investment securities under the Uniform

Commercial Code and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

B. Building bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money."

Section 9. Section 6-21C-10 NMSA 1978 (being Laws 2001, Chapter 199, Section 10) is amended to read:

"6-21C-10. SUIT MAY BE BROUGHT TO COMPEL PERFORMANCE OF OFFICERS.--Any holder of building bonds or any person or officer being a party in interest may sue to enforce and compel the performance of the provisions of the State Building Bonding Act."

Section 10. Section 6-21C-11 NMSA 1978 (being Laws 2001, Chapter 199, Section 11) is amended to read:

"6-21C-11. BUILDING BONDS TAX EXEMPT.--All building bonds shall be exempt from taxation by the state or any of its political subdivisions."

Section 11. Section 7-1-6.42 NMSA 1978 (being Laws 2001, Chapter 199, Section 12) is amended to read:

"7-1-6.42. DISTRIBUTION--STATE BUILDING BONDING FUND--GROSS RECEIPTS TAX.-- A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state building bonding fund in the amount of five hundred thousand dollars (\$500,000) from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act. The distribution shall be made:

- A. after the required distribution pursuant to Section 7-1-6.4 NMSA 1978;
- B. contemporaneously with other distributions of net receipts attributable to the gross receipts tax for payment of debt service on outstanding bonds or to a fund dedicated for that purpose; and
- C. prior to any other distribution of net receipts attributable to the gross receipts tax."

Section 12. TEMPORARY PROVISION--OUTSTANDING STATE OFFICE BUILDING TAX REVENUE BONDS--FUND BALANCES.--

A. Nothing in this act shall be deemed to impair state office building tax revenue bonds outstanding on the effective date of this act. For the purposes of the obligations incurred with respect to those bonds:

(1) the State Office Building Acquisition Bonding Act and the State Building Bonding Act are the same act. The provisions of the State Building Bonding Act apply to the same extent as the provisions of the State Office Building Acquisition Bonding Act applied prior to the effective date of this act; and

(2) the state office building bonding fund and the state building bonding fund are the same fund. Money in the state building bonding fund is pledged for the payment of principal and interest on those bonds to the same extent that the state office building bonding fund was pledged prior to the effective date of this act.

B. The state building bonding fund is a new name for the state office building bonding fund and is not a new fund created by this act. The purposes and balances of the state office building bonding fund as they existed before the effective date of this act remain the purposes and balances of the state building bonding fund.

Section 13. REPEAL.--Section 6-21C-2 NMSA 1978 (being Laws 2001, Chapter 199, Section 2) is repealed.

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 496, AS AMENDED

CHAPTER 372

CHAPTER 372, LAWS 2003

AN ACT

RELATING TO REVENUE BONDS; AUTHORIZING THE ISSUANCE OF STATE MUSEUM TAX REVENUE BONDS FOR RENOVATION AND MAINTENANCE OF FACILITIES AND DEVELOPMENT OF PERMANENT EXHIBITIONS AT STATE MUSEUMS AND MONUMENTS; MAKING AN APPROPRIATION.

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

Section 1. STATE MUSEUM TAX REVENUE BONDS AUTHORIZED.--

A. The New Mexico finance authority may issue and sell state museum tax revenue bonds in compliance with the State Building Bonding Act in a total amount not to exceed five million seven hundred sixty thousand dollars (\$5,760,000) when the state cultural affairs officer certifies to the authority that the proceeds from the state museum tax revenue bonds are needed for projects pursuant to Subsection B of this section. The authority shall schedule the issuance and sale of the bonds in the most expeditious and

economical manner possible upon a finding by the authority that the projects can proceed within a reasonable time. The authority shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated to the office of cultural affairs for expenditure in fiscal year 2003 and subsequent fiscal years pursuant to Subsection B of this section.

B. The proceeds from the sale of the bonds authorized in Subsection A of this section shall be expended for the following projects in the following amounts:

(1) eight hundred fifty thousand dollars (\$850,000) for a fire suppression system at the New Mexico museum of space history in Alamogordo;

(2) six hundred thousand three hundred dollars (\$600,300) for repairs to the New Mexico museum of natural history and science in Albuquerque;

(3) three hundred forty-four thousand nine hundred dollars (\$344,900) for repairs to state monuments statewide;

(4) four hundred twenty-five thousand dollars (\$425,000) for repairs to the museum of international folk art in Santa Fe;

(5) six hundred twenty thousand dollars (\$620,000) for repairs at the museum of Indian arts and culture, including the laboratory of anthropology, in Santa Fe;

(6) six hundred seventy-five thousand dollars (\$675,000) for repairs to the museum of fine arts in Santa Fe;

(7) three hundred thirty thousand dollars (\$330,000) for repairs to the palace of the governors in Santa Fe;

(8) one hundred seven thousand eight hundred dollars (\$107,800) for erosion control at the New Mexico farm and ranch heritage museum in Las Cruces;

(9) one million dollars (\$1,000,000) for exhibition development at the camino real international heritage center in Socorro county;

(10) four hundred thousand dollars (\$400,000) for exhibition development at the New Mexico farm and ranch heritage museum in Dona Ana county; and

(11) four hundred seven thousand dollars (\$407,000) for exhibition development at the New Mexico museum of natural history and science in Albuquerque.

C. The authorization made in Subsection A of this section is contingent upon the enactment into law of House Bill 496 by the first session of the forty-sixth legislature.

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 594, AS AMENDED

CHAPTER 373

CHAPTER 373, LAWS 2003

AN ACT

RELATING TO HEALTH CARE; REQUIRING UNIFORM PRESCRIPTION DRUG IDENTIFICATION CARDS IN CERTAIN CIRCUMSTANCES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Prescription Drug Uniform Information Card Act".

Section 2. INTENT OF LEGISLATURE.--It is the intent of the legislature to improve care for patients by enacting the Prescription Drug Uniform Information Card Act to minimize confusion, eliminate unnecessary paperwork, decrease administrative burdens and streamline dispensing of prescription products paid for by third party payors.

Section 3. PRESCRIPTION DRUG INFORMATION CARD REQUIRED.--

A. A health benefit plan that provides coverage for prescription drugs and that issues, uses or requires a card for prescription claims submission and adjudication, and third-party administrators for self-insured plans and state-administered plans, or the plan's agents or contractors that issue such cards, shall issue for the plan's insureds, enrollees or participants a uniform prescription drug information card that conforms to the standards of the national council for prescription drug programs' current implementation guide for such cards.

B. The uniform prescription drug information card required in Subsection A of this section shall include all of the national council for prescription drug programs'

standard information adopted by the current implementation guide or at a minimum contain the following labeled information:

- (1) the card issuer name or logo on the front of the card;
- (2) the cardholder's name and identification number, which shall be displayed on the front side of the card;
- (3) complete information for electronic transaction claims routing, including:
 - (a) the international identification number labeled as RxBin;
 - (b) the processor control number labeled as RxPCN if required for proper routing of electronic claim transactions for prescription benefits; and
 - (c) the group number labeled as RxGrp if required for proper routing of electronic claim transactions for prescription benefits; and
- (4) a telephone number that pharmacy providers may call for pharmacy benefit claims assistance.

C. All information required in Subsection B of this section shall be included in a clear, readable and understandable manner on the card issued by the plan, its administrators or its agents or contractors. The content and format of all information shall be in the current content and format required by the plan for electronic claims routing.

D. The uniform prescription drug information card required by this section shall be issued by a health benefit plan or by the plan's administrators, agents or contractors upon enrollment and reissued within a reasonable time upon any change in the information required under Subsection B or C of this section; provided, however, the plan, its administrators or its agents or contractors shall not be required to issue a new card more often than once in a calendar year; and further provided that nothing shall prevent the plan, its administrators or its agents or contractors from issuing stickers or other methodologies to the insureds, enrollees or participants to update the cards temporarily until the cards are reissued, or from reissuing updated new cards on a more frequent basis.

E. The uniform prescription drug information card required by the Prescription Drug Uniform Information Card Act may be used for any and all health insurance coverage. Nothing in this section requires any person issuing, using or requiring the card to issue, use or require a separate card for prescription coverage; provided that the card can accommodate the information necessary to process the claim as required in this section.

F. The superintendent of insurance shall adopt such rules as he deems necessary to implement and ensure full compliance with the provisions of the Prescription Drug Uniform Information Card Act. If rules are deemed necessary, they shall be prepared not later than six months after July 1, 2003.

G. As used in this section, "health benefit plan" means an accident and health insurance policy, plan or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement to the extent permitted by the employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that act provided under federal law or regulation. "Health benefit plan" does not include any of the following types of insurance:

- (1) accident;
- (2) credit;
- (3) disability income;
- (4) specified disease;
- (5) dental or vision;
- (6) coverage issued as a supplement to liability insurance;
- (7) medical payments under automobile or homeowners;
- (8) insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance; and
- (9) hospital income or indemnity.

Section 4. APPLICABILITY.--

A. All health benefit plans issued or renewed on or after July 1, 2003 shall comply with the Prescription Drug Uniform Information Card Act no later than two years after July 1, 2003. For purposes of that act, renewal of a health benefit policy, contract or plan is presumed to occur on each anniversary of the date on which coverage was first effective for the persons covered by the health benefit plan.

B. The Prescription Drug Uniform Information Card Act shall not apply to the medicaid fee-for-service prescription drug program.

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR HOUSE BILL 605, AS AMENDED

CHAPTER 374

CHAPTER 374, LAWS 2003

AN ACT

RELATING TO LOCAL GOVERNMENTS; ENACTING THE CIVIC AND CONVENTION CENTER FUNDING ACT; AUTHORIZING CERTAIN LOCAL GOVERNMENTAL ENTITIES TO IMPOSE A DAILY FEE ON THE USE OF LODGING FACILITIES; AUTHORIZING QUALIFIED MUNICIPALITIES TO ISSUE BONDS; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Civic and Convention Center Funding Act".

Section 2. DEFINITIONS.--As used in the Civic and Convention Center Funding Act:

A. "convention center fee" means the fee imposed by a local government entity pursuant to the Civic and Convention Center Funding Act on vendees for the use of lodging facilities;

B. "county" means a county within which a qualified municipality is located;

C. "local governmental entity" means a qualified municipality or a county authorized by the Civic and Convention Center Funding Act to impose convention center fees;

D. "lodging facility" means a hotel, motel or motor hotel, a bed and breakfast facility, an inn, a resort or other facility offering rooms for payment of rent or other consideration;

E. "qualified municipality" means an incorporated municipality that has a population of more than fifty thousand but less than seventy thousand according to the most recent federal decennial census and that is located in a class A county;

F. "room" means a unit of a lodging facility, such as a hotel room;

G. "vendee" means a person who rents or pays consideration to a vendor for use of a room; and

H. "vendor" means a person or his agent who furnishes rooms for occupancy for consideration.

Section 3. AUTHORIZED LOCAL GOVERNMENTAL ENTITIES.--The following local governmental entities are authorized to impose a convention center fee:

A. a qualified municipality if the governing body of the qualified municipality has by resolution authorized the development and construction of a civic and convention center within the qualified municipality; and

B. a county, provided that:

(1) a qualified municipality within the county has enacted an ordinance to impose a convention center fee; and

(2) the qualified municipality and the county have entered into a joint powers agreement pursuant to the Joint Powers Agreements Act to collect the revenue from the convention center fee and to expend the revenue as required in the Civic and Convention Center Funding Act.

Section 4. IMPOSITION OF CONVENTION CENTER FEE--USE OF PROCEEDS.--

A. A local governmental entity that has met the requirements of Section 3 of the Civic and Convention Center Funding Act may impose by ordinance a fee on the use of a room at a lodging facility within the local governmental entity; provided that a fee imposed by a county shall only apply to lodging facilities located within twenty miles of the corporate limits of the qualified municipality. The fee may be referred to as the "convention center fee". The amount of the convention center fee shall not exceed one percent of the gross room revenue for each day the room is occupied by a vendee.

B. The convention center fee shall be imposed only for the period necessary for payment of principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed thirty years from the date of the ordinance imposing the fee.

C. A local governmental entity shall not decrease the convention center fee while revenue bonds to which the revenue of the convention center fee is pledged remain outstanding.

D. A local governmental entity shall dedicate the revenue from the convention center fee at the time that the ordinance imposing the fee is enacted and limit the use of the revenue to the following:

(1) the design, construction, equipping, furnishing, landscaping and other costs associated with the development of a civic and convention center and adjoining parking garage located within the qualified municipality;

(2) payments of principal, interest or prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by the Civic and Convention Center Funding Act; and

(3) costs of collecting and otherwise administering the convention center fee; provided that administration costs shall not be paid until all required payments on the revenue bonds issued pursuant to the Civic and Convention Center Funding Act are made and that no more than ten percent of the revenue collected in any fiscal year shall be used to pay administration costs.

Section 5. EXEMPTIONS.--The convention center fee shall not apply:

A. if a vendee:

(1) has been a permanent resident of the lodging facility for a period of at least thirty consecutive days; or

(2) enters into or has entered into a written agreement for a room at a lodging facility for a period of at least thirty consecutive days;

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

C. to rooms at institutions of the federal government, the state or any political subdivision thereof;

D. to rooms at religious, charitable, educational or philanthropic institutions, including rooms at summer camps operated by such institutions;

E. to clinics, hospitals or other medical facilities;

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

G. if the vendor does not offer at least three rooms at its lodging facility. The convention center fee shall be imposed on the lodging facilities of a vendor that owns three or more lodging facilities within local governmental entities that have imposed a convention center fee, regardless of the number of rooms available for occupancy.

Section 6. COLLECTION OF CONVENTION CENTER FEE.--

A. A vendor providing rooms within a local governmental entity that has imposed a convention center fee shall collect the proceeds on behalf of the local governmental entity and shall act as a trustee for the fees collected.

B. The convention center fee shall be collected from vendees in accordance with the ordinance imposing the convention center fee and shall be accounted for separately from the rent fixed by the vendor for rooms.

Section 7. AUDIT OF VENDORS.--A local governmental entity imposing a convention center fee shall include verification of the collection of the correct convention center fee in any audit of a vendor conducted pursuant to Section 3-38-17.1 NMSA 1978.

Section 8. FINANCIAL REPORTING.--The chief executive officer of a local governmental entity imposing a convention center fee shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of convention center fee funds.

Section 9. ENFORCEMENT.--

A. An action to enforce the Civic and Convention Center Funding Act may be brought by:

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

(2) a vendor who is collecting the proceeds of a convention center fee in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Civic and Convention Center Funding Act.

C. The court shall award costs and reasonable attorney fees to the prevailing party in a court action to enforce the provisions of the Civic and Convention Center Funding Act.

Section 10. COLLECTION OF DELINQUENCIES.--

A. A local governmental entity shall by ordinance provide that a vendor is liable for the payment of the proceeds of convention center fees that the vendor failed to remit to the local governmental entity. Failure of the vendor to collect the fee is not cause for the local governmental entity to forgive convention center fees due and owed by the vendor. The ordinance shall provide for a civil penalty for each occurrence of failure to remit convention center fees in an amount equal to the greater of ten percent of the amount that was not duly remitted to the local governmental entity or one hundred dollars (\$100).

B. The local governmental entity may bring an action in the district court of the judicial district in which the local governmental entity is located for collection of amounts due, including without limitation, penalties on the amounts due on the unpaid principal at a rate not exceeding one percent per month, the costs of collection and reasonable attorney fees incurred in connection with the court action to collect the unpaid convention center fees.

Section 11. LIEN FOR CONVENTION CENTER FEE--PAYMENT-- CERTIFICATE OF LIEN.--

A. The convention center fee assessed by a local governmental entity constitutes a lien in favor of that local governmental entity upon the personal and real property of the vendor providing lodging facilities in that local governmental entity. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

B. Under process or order of court, a person shall not sell the property of a vendor without first ascertaining from the clerk or treasurer of the local governmental entity in which the vendor is located the amount of any convention center fees due. Convention center fees due the local governmental entity shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

C. The clerk or treasurer of the local governmental entity shall furnish a certificate of lien to a person applying for a certificate showing the amount of all liens in the records of the local governmental entity against any vendor pursuant to the Civic and Convention Center Funding Act.

Section 12. ORDINANCE REQUIREMENTS.--The ordinance imposing a convention center fee or any ordinance amending the imposition of a convention center fee shall:

A. state:

- (1) the rate of the convention center fee to be imposed;
- (2) the times, place and method for the payment of the convention center fee proceeds to the local governmental entity;
- (3) the accounts and other records to be maintained in connection with the convention center fee;
- (4) a procedure for making refunds and resolving disputes relating to the convention center fee;
- (5) the procedure for preservation and destruction of records and for their inspection and investigation;
- (6) vendor audit requirements;
- (7) applicable civil and criminal penalties; and
- (8) a procedure of liens, distraint and sales to satisfy those liens;

and

B. provide other rights, privileges, powers, immunities and other details relating to the collection of the convention center fee and the remittance of the proceeds to the local governmental entity.

Section 13. REVENUE BONDS.--

A. Revenue bonds may be issued at any time by a qualified municipality that has imposed a convention center fee to defray wholly or in part the costs authorized in Paragraph (1) of Subsection D of Section 4 of the Civic and Convention Center Funding Act. The revenue bonds may be payable from and payment may be secured by a pledge of and lien on the revenue derived from:

- (1) the proceeds of the convention center fee of the qualified municipality and the proceeds of the convention center fee of a county that has entered into a joint powers agreement with the qualified municipality to impose a convention center fee, the proceeds of which shall be dedicated to the payment of revenue bonds for a civic and convention center in the qualified municipality;

(2) a civic and convention center to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of the civic and convention center;

(3) that portion of the proceeds of the occupancy tax of the qualified municipality available for payment of revenue bonds pursuant to Paragraph (1) of Subsection B of Section 3-38-23 NMSA 1978;

(4) any other legal available revenues of the qualified municipality;
or

(5) a combination of revenues from the sources designated in Paragraphs (1) through (4) of this subsection.

B. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act, and the first interest payment may be for any period authorized in the Public Securities Act.

C. Except as otherwise provided in the Civic and Convention Center Funding Act, revenue bonds authorized in that act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

Section 14. REFUNDING BONDS.--

A. A qualified municipality having issued revenue bonds as authorized in the Civic and Convention Center Funding Act may issue refunding revenue bonds payable from pledged revenues authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the qualified municipality may determine, notwithstanding that the revenue sources or the pledge of such revenues or both are thereby modified.

B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or a part of outstanding bonds of any one or more outstanding bond issues:

(1) for the acceleration, deceleration or other modification of the payment of the obligations, including any capitalization of any interest in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds or otherwise concerning the outstanding bonds; or

(4) for any combination of the purposes specified in Paragraphs (1) through (3) of this subsection.

C. The interest on a bond refunded shall not be increased to a rate in excess of the rate authorized in the Public Securities Act and shall be paid as authorized in that act.

D. Refunding bonds for any other purpose permitted by the Civic and Convention Center Funding Act may be issued separately or issued in combination in one series or more.

E. Except as otherwise provided in the Civic and Convention Center Funding Act, refunding bonds authorized in that act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

Section 15. PENALTIES.--A local governmental entity shall by ordinance provide for penalties by creating a misdemeanor and imposing a fine of not more than five hundred dollars (\$500) or imprisonment for not more than ninety days or both for a violation by any person of the provisions of the convention center fee ordinance for a failure to pay the fee or to remit the proceeds thereof to the local governmental entity.

HOUSE BILL 876

CHAPTER 375

CHAPTER 375, LAWS 2003

AN ACT

RELATING TO FINANCE; CREATING A TASK FORCE FOR FINANCIAL INDEPENDENCE.

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

Section 1. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) New Mexico has one of the highest rates of poverty in the country;

(2) New Mexico households with low and very low annual income levels have a difficult time obtaining assets;

(3) over twenty-four percent of New Mexico children live at or below the poverty level; and

(4) New Mexico's poverty rate is eighteen percent, compared to the national average of twelve and one-half percent.

B. The purpose of this act is to create a task force that will recommend and develop effective strategies to help New Mexicans achieve financial independence.

Section 2. TEMPORARY PROVISION--TASK FORCE FOR FINANCIAL INDEPENDENCE CREATED--MEMBERSHIP--APPOINTMENT.--

A. There is created the "task force for financial independence", which shall function from the date of its appointment until December 1, 2004.

B. The task force shall be composed of at least fifteen members and be chaired by the lieutenant governor. Members shall be appointed by the governor from the following:

- (1) the New Mexico mortgage finance authority;
- (2) the New Mexico bankers association;
- (3) the independent community bankers association of New Mexico;
- (4) the New Mexico credit union league;
- (5) the New Mexico community foundation;
- (6) the state department of public education;
- (7) the human services department;
- (8) the economic development department;
- (9) the New Mexico small business development center;
- (10) the labor department;

(11) the Hispano chamber of commerce;

(12) the bureau of business and economic research at the university of New Mexico;

(13) the New Mexico small business investment corporation;

(14) the health care industry;

(15) legislators serving on the interim economic and rural development and telecommunications committee;

(16) legislators serving on other appropriate legislative committees;
and

(17) not-for-profit organizations that promote asset building with low-income populations.

C. Each member of the task force shall be paid per diem and mileage as provided in the Per Diem and Mileage Act for nonsalaried public officers.

Section 3. TEMPORARY PROVISION--DUTIES OF THE TASK FORCE.-- The task force for financial independence shall:

A. identify and explore current and proposed strategies to foster financial independence and asset building;

B. pursue the strategies identified in Subsection A of this section that will have the greatest impact for financial independence and that are most viable, and formulate and advocate for public policy efforts that are required for implementation;

C. develop suggestions consistent with the current highly restrictive state budget environment;

D. explore asset building and implementation strategies for New Mexico in the areas of:

(1) asset facilitation;

(2) asset incentives; and

(3) asset protection, including removing barriers to asset accumulation;

E. seek private sector funding to assist in preparing task force reports; and

F. collaborate with other state financial independence task forces and other relevant national organizations in formatting research in a manner that is compatible with national evaluation methods.

HOUSE APPROPRIATIONS AND FINANCE

COMMITTEE SUBSTITUTE FOR HOUSE BILL 935

CHAPTER 376

CHAPTER 376, LAWS 2003

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; EXEMPTING TABLE WINE FROM SEGREGATED SALES BY SOME RETAILERS AND DISPENSERS.

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

Section 1. Section 60-6B-19 NMSA 1978 (being Laws 1993, Chapter 68, Section 36) is amended to read:

"60-6B-19. RETAILERS AND DISPENSERS--SEGREGATED SALES--TABLE WINES EXCEPTED.--

A. Except as provided in Subsection B of this section, the director shall by regulation develop procedures for segregated alcohol sales by every retailer or dispenser who sells alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises and whose sales are less than sixty percent of their total sales, giving serious consideration in the regulation process to the potentially adverse impact of segregated sales on different sizes of the establishments of the retailer or dispenser.

B. There shall not be segregated sales of table wine by retailers or dispensers who sell alcoholic beverages in the manner described in Subsection A of this section.

C. For purposes of this section, "table wine" means wine containing fourteen percent or less alcohol by volume when bottled or packaged by the manufacturer, but may also include:

(1) wine that is sealed or capped by cork closure and aged two years or more;

(2) wine that contains more than fourteen percent alcohol by volume produced solely as a result of the natural fermentation process and not produced with the addition of wine spirits, brandy or alcohol; or

(3) vermouth and sherry."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 944

CHAPTER 377

CHAPTER 377, LAWS 2003

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR INSPECTION OF PRECINCT VOTER LISTS BY POLL WATCHERS; PROVIDING FOR THE APPOINTMENT OF POLL WATCHERS.

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

Section 1. Section 1-2-27 NMSA 1978 (being Laws 1969, Chapter 240, Section 46, as amended) is amended to read:

"1-2-27. WATCHERS--APPOINTMENT.--

A. The county chairman of each political party represented on the ballot may appoint in writing two watchers for each precinct. If any county chairman fails to make the appointments, the precinct chairman of the political party may appoint in writing two watchers for the precinct. If any precinct chairman fails to make the appointments, or if no person properly appointed is present at the polling place and offers to serve, the voters present belonging to that political party may appoint in writing two watchers.

B. In a general election, a candidate for elected office and an election-related organization may appoint one watcher per polling place if the candidate or organization makes a written request to the secretary of state at least twenty days prior to the election date and specifies the polling place to be watched and the name of the qualified appointee. The secretary of state shall notify the county clerk of the qualified appointees at least ten days before the election. For the purposes of this section,

"election-related organization" means a nonpartisan organization involved in voter turnout activities.

C. In a primary election any group of six candidates for county office for each political party participating in the election may appoint in writing an additional watcher for each precinct. No candidate, however, shall join in more than one request for an additional watcher.

D. In a primary election any group of three candidates seeking nomination for statewide or district office may appoint in writing one watcher for each of those precincts as they may desire. No candidate, however, shall join in more than one request for an additional watcher at any precinct."

Section 2. Section 1-2-29 NMSA 1978 (being Laws 1969, Chapter 240, Section 48) is amended to read:

"1-2-29. WATCHERS--PERMISSIBLE AND UNPERMISSIBLE ACTIVITIES.--

A. Upon presentation of his written appointment to the precinct board, a watcher may:

(1) be present from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close;

(2) be permitted to observe that the election is being conducted in accordance with the Election Code;

(3) inspect the precinct voter list to ascertain whether a voter has voted, subject to the same prohibitions and restrictions as are placed upon challengers by the Election Code;

(4) examine any voting machine being used in the precinct in the same manner that challengers may examine the voting machines; and

(5) make in any polling place and preserve for future reference written memoranda of any action or omission on the part of any member of the precinct board charged with the performance of a duty by the Election Code.

B. A watcher is subject to the same prohibitions and restrictions as are placed upon challengers by the Election Code."

CHAPTER 378

CHAPTER 378, LAWS 2003

AN ACT

RELATING TO ELECTIONS; REQUIRING THE COUNTY CLERK TO REPORT TOTAL VOTES FOR EACH PRECINCT FOR ABSENTEE VOTES CAST BY MAIL, ABSENTEE VOTES CAST IN PERSON AND VOTES CAST IN PERSON.

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

Section 1. A new section of the Election Code is enacted to read:

"ABSENTEE VOTER RETURNS--REPORTING.--The county clerk shall report to the secretary of state the total votes in each precinct for each candidate and ballot question as follows:

- A. vote totals by voters who vote in person on election day;
- B. vote totals by absentee voters who vote early in person; and
- C. vote totals by absentee voters who vote by absentee ballots by mail."

HOUSE BILL 986

CHAPTER 379

CHAPTER 379, LAWS 2003

AN ACT

RELATING TO HIGHER EDUCATION; PROVIDING FOR ADDITIONAL ENDOWED CHAIRS AT MAJOR RESEARCH INSTITUTIONS FOR THE PURPOSE OF ECONOMIC DEVELOPMENT; MAKING AN APPROPRIATION.

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

Section 1. Section 21-1-27.1 NMSA 1978 (being Laws 2002, Chapter 31, Section 1) is amended to read:

"21-1-27.1. FACULTY ENDOWMENT FUND CREATED.--

A. The "faculty endowment fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests. Money in the fund shall not revert at the end of any fiscal year.

B. The faculty endowment fund shall be administered by the commission on higher education. Except as provided in Subsection J of this section, money shall be disbursed only on warrant of the secretary of finance and administration upon voucher signed by the executive director of the commission on higher education or his authorized representative.

C. Money shall be disbursed from the faculty endowment fund only to establish endowments for chairs, professorships and faculty development programs at four-year public post-secondary educational institutions as provided in this section. Except as provided in Subsection J of this section, an institution shall not receive a disbursement for an endowment until that institution has notified the commission on higher education that it has received matching funds for the endowment from other than governmental sources in an amount that is equal to or greater than the amount authorized by this section to be disbursed for the endowment.

D. Except as provided in Subsection J of this section, money in the faculty endowment fund is appropriated to the commission on higher education to be disbursed for the following endowment purposes in the following amounts:

(1) for endowed chairs, five hundred thousand dollars (\$500,000) for each endowed chair;

(2) for endowed professorships, two hundred thousand dollars (\$200,000) for each endowed professorship; and

(3) for endowed faculty development programs, to include lectureships, graduate fellowships and other faculty support programs, thirty-seven thousand five hundred dollars (\$37,500) for each endowed faculty development program.

E. Except as provided in Subsection J of this section, until June 30, 2005, the following institutions shall be eligible for the following disbursements from the fund:

(1) the university of New Mexico for four endowed chairs;

(2) New Mexico state university for four endowed chairs;

(3) New Mexico institute of mining and technology for two endowed chairs;

(4) the university of New Mexico for two endowed chairs at the university of New Mexico medical center; and

(5) the university of New Mexico, New Mexico state university, New Mexico highlands university, New Mexico institute of mining and technology, western New Mexico university and eastern New Mexico university for endowed professorships and endowed faculty development programs. The number of endowed professorships and endowed faculty development programs allocated to each of the named institutions shall be in the same ratio to the total number of endowed professorships and endowed faculty development programs allocated to all of the named institutions as the main campus full-time-equivalent enrollment of the institution bears to the total main campus full-time-equivalent enrollment of all of the named institutions. For purposes of this paragraph, the main campus full-time-equivalent enrollment of each institution shall be based on enrollment figures for the second semester of the 2001-2002 school year.

F. On or after July 1, 2005, money remaining in the faculty endowment fund shall be available for additional disbursements by the commission on higher education to any of the institutions named in this section, subject to receipt of matching funds. Disbursements may be made based on the date requests for additional disbursement are received by the commission.

G. The endowment funds of the institutions shall not be expended but shall be invested by the institutions in accordance with the prudent man rule, and in accordance with the provisions of Section 21-1-38 NMSA 1978. The income from the investments shall be used by the institutions to provide funding for chairs, professorships and faculty development programs, including paying all or a portion of the salary of the faculty member or the expenses necessary to support associated academic activities.

H. Except as provided in Subsection J of this section, disbursements of the faculty endowment fund by the commission on higher education shall be allocated as follows:

(1) fifty percent of the disbursements shall be for endowed chairs;

(2) thirty-five percent of the disbursements shall be for endowed professorships; and

(3) fifteen percent of the disbursements shall be for endowed faculty development programs.

I. If the disbursements allocated for endowed chairs are not sufficient to fund the number of positions specified in Paragraphs (1) through (4) of Subsection E of this section, the number of endowed chairs for each of those four institutions shall be proportioned by the commission on higher education in the same manner as endowed professorships and endowed faculty development programs are proportioned in Paragraph (5) of Subsection E of this section, except that each of the four institutions shall be allocated at least one endowed chair.

J. Up to three million dollars (\$3,000,000) of the faculty endowment fund may be disbursed after July 1, 2003 to the commission on higher education to endow and disburse the money for one endowed chair each to the university of New Mexico, New Mexico state university and the New Mexico institute of mining and technology. Each endowed chair shall be eligible for one million dollars (\$1,000,000) upon notification by the institution that it has received matching funds for the endowment from other than state sources in an amount equal to or greater than two-thirds of that amount for establishment of an endowed chair that is directly related to the economic development of the state."

HOUSE BILL 756, AS AMENDED

CHAPTER 380

CHAPTER 380, LAWS 2003

AN ACT

PROVIDING FOR A COMPREHENSIVE STUDY ON HEALTH CARE AND HEALTH CARE COSTS IN NEW MEXICO.

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

Section 1. TEMPORARY PROVISION--HEALTH CARE STUDY.--The legislative health and human services committee, in consultation with the New Mexico health policy commission, shall conduct a comprehensive study to review or determine the impact of health care expenditures on the health care industry and the state's economy, including compensated and uncompensated costs; the expectations and outcomes of state and national health care reform efforts over the last ten to fifteen years; and the public and private costs of providing health care to all New Mexicans. The legislative health and human services committee shall provide a written report to the governor and the New Mexico legislative council by November 1, 2004.

HOUSE GOVERNMENT AND URBAN AFFAIRS

COMMITTEE SUBSTITUTE FOR

CHAPTER 381

CHAPTER 381, LAWS 2003

AN ACT

RELATING TO PRESCRIPTION DRUGS; REQUIRING REPORTING OF CERTAIN INFORMATION BY PRESCRIPTION DRUG MANUFACTURERS; PROVIDING LIMITATIONS AND EXCEPTIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES.

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

Section 1. AVERAGE MANUFACTURER PRICE--FILING--REPORTING.--

A. A person who manufactures a prescription drug, including a generic prescription drug, that is sold in New Mexico shall file with the human services department:

(1) the average manufacturer price for the drug;

(2) the price that each wholesaler or pharmacy benefit manager doing business in this state pays the manufacturer to purchase the drug; and

(3) the price paid to the manufacturer by any entity in an arrangement or contract that sells or provides prescription drugs in New Mexico without the services of a wholesaler.

B. The information required under Subsection A of this section shall be filed annually or more frequently, as determined by the human services department. The information required under Subsection A of this section is confidential and shall not be disclosed pursuant to Section 3 of this act and shall not be subject to public inspection pursuant to the provisions of Section 14-2-1 NMSA 1978.

C. A person who engages in the wholesale distribution of prescription drugs in New Mexico shall file with the human services department information showing the actual price at which the wholesaler or distributor sells a particular drug to a pharmacy.

D. As used in this section, "average manufacturer price" means the average price paid to the manufacturer for the drug in New Mexico, including rebates, discounts and market incentives, after deducting customary prompt-pay discounts.

Section 2. UNLAWFUL DISCLOSURE--PENALTIES.--

A. It is unlawful for an employee, former employee, contractor or former contractor of the human services department to reveal to another person, except to another employee or contractor of the department as required by the employee's or contractor's duties or responsibilities or by state or federal court order, information acquired pursuant to Section 1 of this act or any other information about a prescription drug manufacturer acquired as a result of his employment or contract by the department and not available from public sources.

B. An employee, former employee, contractor or former contractor of the human services department who reveals to another person information that he is prohibited from lawfully revealing is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction.

Section 3. ENFORCEMENT.--The office of the attorney general may take action to investigate and enforce the requirements of Sections 1 and 2 of this act.

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.

Section 5. EFFECTIVE DATE.--The effective date of the provisions of Section 2 of this act is January 1, 2004.

HOUSE BILL 666, AS AMENDED

CHAPTER 382

CHAPTER 382, LAWS 2003

AN ACT

RELATING TO THE SENIOR PRESCRIPTION DRUG PROGRAM; ALLOWING FOR MORE EFFICIENT ADMINISTRATIVE PROCEDURES AND FUNDING; PROVIDING FOR APPOINTMENT OF A MEMBER OF THE BOARD OF THE RETIREE HEALTH CARE AUTHORITY; DECLARING AN EMERGENCY.

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

Section 1. Section 10-7C-6 NMSA 1978 (being Laws 1990, Chapter 6, Section 6, as amended) is amended to read:

"10-7C-6. BOARD CREATED--MEMBERSHIP--AUTHORITY.--

A. There is created the "board of the retiree health care authority". The board shall be composed of not more than twelve members.

B. The board shall include:

(1) one member who is not employed by or on behalf of or contracting with an employer participating in or eligible to participate in the Retiree Health Care Act and who shall be appointed by the governor to serve at the pleasure of the governor;

(2) the educational retirement director or the educational retirement director's designee;

(3) one member to be selected by the public school superintendents' association of New Mexico;

(4) one member who is a teacher who is certified and teaching in elementary or secondary education to be selected by a committee composed of one person designated by the New Mexico association of classroom teachers, one person designated by the national education association of New Mexico and one person designated by the New Mexico federation of teachers;

(5) one member who is an eligible retiree of a public school and who is selected by the New Mexico association of retired educators;

(6) the executive secretary of the public employees retirement association or the executive secretary's designee;

(7) one member who is an eligible retiree receiving a benefit from the public employees retirement association and who is selected by the retired public employees of New Mexico;

(8) one member who is an elected official or employee of a municipality participating in the Retiree Health Care Act and who is selected by the New Mexico municipal league;

(9) the state treasurer or the state treasurer's designee; and

(10) one member who is a classified state employee selected by the personnel board.

C. The board, in accordance with the provisions of Paragraph (3) of Subsection D of Section 10-7C-9 NMSA 1978, shall include, if they qualify:

(1) one member who is an eligible retiree of an institution of higher education participating in the Retiree Health Care Act and who is selected by the New Mexico association of retired educators; and

(2) one member who is an elected official or employee of a county participating in the Retiree Health Care Act and who is selected by the New Mexico association of counties.

D. Every member of the board shall serve at the pleasure of the party that selected that member.

E. The members of the board shall begin serving their positions on the board on the effective date of the Retiree Health Care Act or upon their selection, whichever occurs last, unless that member's corresponding position on the board has been eliminated pursuant to Subsection D of Section 10-7C-9 NMSA 1978.

F. The board shall elect from its membership a president, vice president and secretary.

G. The board may appoint such officers and advisory committees as it deems necessary. The board may enter into contracts or arrangements with consultants, professional persons or firms as may be necessary to carry out the provisions of the Retiree Health Care Act.

H. The members of the board and its advisory committees shall receive per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance."

Section 2. Section 10-7C-17 NMSA 1978 (being Laws 2002, Chapter 75, Section 2 and Laws 2002, Chapter 80, Section 2) is amended to read:

"10-7C-17. CREATION OF SENIOR PRESCRIPTION DRUG PROGRAM.--

A. The "senior prescription drug program" is created in the authority.

B. To be eligible for the senior prescription drug program, a person shall:

(1) be a resident of the state; and

(2) be sixty-five years of age or older.

C. Upon a determination that the person qualifies for the senior prescription drug program, the authority may assess an annual administrative fee not to exceed sixty dollars (\$60.00) per year. The authority shall collect the fees, which shall be used by the authority to cover the cost of administering the program.

D. The amount a qualified person pays for a prescription drug shall not exceed the total cost of the dispensing fee plus the contracted discounted price made available to the authority for this group of seniors.

E. The authority shall enroll and provide participants with electronic or other form of membership identification for use by pharmacies for each transaction.

F. The authority shall actively promote membership and benefit information on the senior prescription drug program to seniors and the general public throughout the state."

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

HOUSE BILL 513, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 383

CHAPTER 383, LAWS 2003

AN ACT

RELATING TO HUMAN RIGHTS; MAKING IT UNLAWFUL TO DISCRIMINATE BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY; PROHIBITING QUOTAS BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY.

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

Section 1. Section 28-1-2 NMSA 1978 (being Laws 1969, Chapter 196, Section 2, as amended) is amended to read:

"28-1-2. DEFINITIONS.--As used in the Human Rights Act:

A. "person" means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions;

B. "employer" means any person employing four or more persons and any person acting for an employer;

C. "commission" means the human rights commission;

D. "director" means the director of the human rights division of the labor department;

E. "employee" means any person in the employ of an employer or an applicant for employment;

F. "labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment;

G. "employment agency" means any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit or refer employees;

H. "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private;

I. "housing accommodation" means any building or portion of a building that is constructed or to be constructed, which is used or intended for use as the residence or sleeping place of any individual;

J. "real property" means lands, leaseholds or commercial or industrial buildings, whether constructed or to be constructed, offered for sale or rent, and any land rented or leased for the use, parking or storage of house trailers;

K. "secretary" means the secretary of labor;

L. "unlawful discriminatory practices" means those unlawful practices and acts specified in Section 28-1-7 NMSA 1978;

M. "physical or mental handicap" means a physical or mental impairment that substantially limits one or more of a person's major life activities. A person is also considered to be physically or mentally handicapped if he has a record of a physical or mental handicap or is regarded as having a physical or mental handicap;

N. "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

O. "applicant for employment" means a person applying for a position as an employee;

P. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived; and

Q. "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth."

Section 2. Section 28-1-7 NMSA 1978 (being Laws 1969, Chapter 196, Section 7, as amended) is amended to read:

"28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an unlawful discriminatory practice for:

A. an employer, unless based on a bona fide occupational qualification or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation; provided, however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply to discrimination based on age;

B. a labor organization to exclude a person or to expel or otherwise discriminate against any of its members or against any employer or employee because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap or serious medical condition;

C. any employer, labor organization or joint apprenticeship committee to refuse to admit or employ any person in any program established to provide an apprenticeship or other training or retraining because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation;

D. any person, employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, to use any form of application for employment or membership or to make any inquiry regarding prospective membership or employment that expresses, directly

or indirectly, any limitation, specification or discrimination as to race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation, unless based on a bona fide occupational qualification;

E. an employment agency to refuse to list and properly classify for employment or refer a person for employment in a known available job, for which the person is otherwise qualified, because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap or serious medical condition, unless based on a bona fide occupational qualification, or to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on the basis of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap or serious medical condition, unless based on a bona fide occupational qualification;

F. any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation;

G. any person to:

(1) refuse to sell, rent, assign, lease or sublease or offer for sale, rental, lease, assignment or sublease any housing accommodation or real property to any person or to refuse to negotiate for the sale, rental, lease, assignment or sublease of any housing accommodation or real property to any person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation;

(2) discriminate against any person in the terms, conditions or privileges of the sale, rental, assignment, lease or sublease of any housing accommodation or real property or in the provision of facilities or services in connection therewith because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation; or

(3) print, circulate, display or mail or cause to be printed, circulated, displayed or mailed any statement, advertisement, publication or sign or use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodation or real property or to make any record or inquiry regarding the

prospective purchase, rental, lease, assignment or sublease of any housing accommodation or real property that expresses any preference, limitation or discrimination as to race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation;

H. any person to whom application is made either for financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or real property or for any type of consumer credit, including financial assistance for the acquisition of any consumer good as defined by Section 55-9-102 NMSA 1978, to:

(1) consider the race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap of any individual in the granting, withholding, extending, modifying or renewing or in the fixing of the rates, terms, conditions or provisions of any financial assistance or in the extension of services in connection with the request for financial assistance; or

(2) use any form of application for financial assistance or to make any record or inquiry in connection with applications for financial assistance that expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap;

I. any person or employer to:

(1) aid, abet, incite, compel or coerce the doing of any unlawful discriminatory practice or to attempt to do so;

(2) engage in any form of threats, reprisal or discrimination against any person who has opposed any unlawful discriminatory practice or has filed a complaint, testified or participated in any proceeding under the Human Rights Act; or

(3) willfully obstruct or prevent any person from complying with the provisions of the Human Rights Act or to resist, prevent, impede or interfere with the commission or any of its members, staff or representatives in the performance of their duties under the Human Rights Act; or

J. any employer to refuse or fail to accommodate a person's physical or mental handicap or serious medical condition, unless such accommodation is unreasonable or an undue hardship."

Section 3. A new section of the Human Rights Act is enacted to read:

"QUOTAS PROHIBITED.--A person, employer, employment agency or organization shall not use the provisions of the Human Rights Act to adopt or implement a quota on the basis of sexual orientation or gender identity."

Section 4. Section 28-1-9 NMSA 1978 (being Laws 1969, Chapter 196, Section 8, as amended) is amended to read:

"28-1-9. EXEMPTIONS.--Nothing contained in the Human Rights Act shall:

A. apply to any single-family dwelling sold, leased, subleased or rented by an owner without the making of any notice, statement or advertisement with respect to the sale, lease, sublease or rental of a dwelling unit that indicates any preference, limitation or discrimination based on race, color, religion, national origin, ancestry, sex, sexual orientation or gender identity. This exemption is subject to these further reservations:

(1) to qualify for the exemption, the seller must not be an owner of or own or have reserved any interest in more than three single-family dwellings; and

(2) if the seller does not currently live in the dwelling or he was not the most recent occupant, the exemption granted in this section shall only apply to one sale in twenty-four months;

B. bar any religious or denominational institution or organization that is operated, supervised or controlled by or that is operated in connection with a religious or denominational organization from limiting admission to or giving preference to persons of the same religion or denomination or from making selections of buyers, lessees or tenants as are calculated by the organization or denomination to promote the religious or denominational principles for which it is established or maintained, unless membership in the religious or denominational organization is restricted on account of race, color, national origin or ancestry;

C. bar any religious or denominational institution or organization that is operated, supervised or controlled by or that is operated in connection with a religious or denominational organization from imposing discriminatory employment or renting practices that are based upon sexual orientation or gender identity; provided, that the provisions of the Human Rights Act with respect to sexual orientation and gender identity shall apply to any other:

(1) for-profit activities of a religious or denominational institution or religious organization subject to the provisions of Section 511(a) of the Internal Revenue Code of 1986, as amended; or

(2) nonprofit activities of a religious or denominational institution or religious organization subject to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

D. apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence;

E. apply to public restrooms, public showers, public dressing facilities or sleeping quarters in public institutions, where the preference or limitation is based on sex;

F. prevent the mandatory retirement of an employee upon reaching the age of sixty-five years or older, if the employer is operating under a retirement plan that meets the requirements of Public Law 93-406, the Employee Retirement Income Security Act of 1974; and

G. apply to a business that employs fourteen or fewer full time employees."

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 28, AS AMENDED

CHAPTER 384

CHAPTER 384, LAWS 2003

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING FOR ALTERATION OF A BASIC SENTENCE OF IMPRISONMENT WHEN A HATE CRIME IS COMMITTED; PROVIDING FOR HATE CRIME DATA COLLECTION AND POLICE TRAINING; REPEALING A SECTION OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--This act may be cited as the "Hate Crimes Act".

Section 2. DEFINITIONS.--As used in the Hate Crimes Act:

A. "age" means sixty years of age or older;

B. "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

C. "handicapped status" means that the person has a physical or mental impairment that substantially limits one or more of that person's functions, such as caring for himself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

D. "motivated by hate" means the commission of a crime with the intent to commit the crime because of the actual or perceived race, religion, color, national origin, ancestry, age, handicapped status, gender, sexual orientation or gender identity of the victim, whether or not the offender's belief or perception was correct; and

E. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

Section 3. HATE CRIMES--NONCAPITAL FELONIES, MISDEMEANORS OR PETTY MISDEMEANORS COMMITTED BECAUSE OF THE VICTIM'S ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY, AGE, HANDICAPPED STATUS, GENDER, SEXUAL ORIENTATION OR GENDER IDENTITY--ALTERATION OF BASIC SENTENCE.--

A. When a separate finding of fact by the court or jury shows beyond a reasonable doubt that an offender committed a noncapital felony motivated by hate, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 may be increased by one year. An increase in the basic sentence of imprisonment pursuant to the provisions of this subsection shall be in addition to an increase in a basic sentence prescribed for the offense in Section 31-18-17 NMSA 1978. A sentence imposed pursuant to the provisions of this subsection may include an alternative sentence that requires community service, treatment, education or any combination thereof. The court may suspend or defer any or all of the sentence or grant a conditional discharge, unless otherwise provided by law.

B. If a finding was entered in a previous case that the offender was convicted for committing a crime that was motivated by hate, and if a separate finding of fact by the court or jury shows beyond a reasonable doubt that in the instant case the offender committed a noncapital felony that was motivated by hate, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 may be increased by two years. An increase in the basic sentence of imprisonment pursuant to the provisions of this subsection shall be in addition to an increase in a basic sentence prescribed for the offense in Section 31-18-17 NMSA 1978. A sentence imposed pursuant to the provisions of this subsection may include an alternative sentence that

requires community service, treatment, education or any combination thereof. The court may suspend or defer any or all of the sentence, or grant a conditional discharge unless otherwise provided by law.

C. If the case is tried before a jury and if a prima facie case has been established showing that in the commission of the offense the offender was motivated by hate, the court shall submit the issue to the jury by special interrogatory. If the case is tried by the court and if a prima facie case has been established showing that in the commission of the offense the offender was motivated by hate, the court shall decide the issue and shall make a separate finding of fact regarding the issue. If the court or jury determines that the offender is guilty of the crime and finds beyond a reasonable doubt that the offender was motivated by hate, the court shall include that determination in the judgment and sentence.

D. When a petty misdemeanor or a misdemeanor is motivated by hate, the basic sentence of imprisonment prescribed for the offense in Section 31-19-1 NMSA 1978 may include an alternative sentence that requires community service, treatment, education or any combination thereof. The court may suspend or defer any or all of the sentence or grant a conditional discharge, unless otherwise provided by law.

Section 4. HATE CRIMES--DATA COLLECTION.--Every district attorney and every state, county and municipal law enforcement agency, to the maximum extent possible, shall provide the federal bureau of investigation with data concerning the commission of a crime motivated by hate, in accordance with guidelines established pursuant to the federal Hate Crime Statistics Act.

Section 5. HATE CRIMES--LAW ENFORCEMENT TRAINING.--

A. No later than December 31, 2003, the New Mexico law enforcement academy board shall develop and incorporate into the basic law enforcement training required, pursuant to the Law Enforcement Training Act, a course of instruction at least two hours in length concerning the detection, investigation and reporting of a crime motivated by hate.

B. The New Mexico law enforcement academy board shall develop a course of instruction, learning and performance objectives and training standards, in conjunction with appropriate groups and individuals that have an interest in and expertise regarding crimes motivated by hate. The groups and individuals shall include law enforcement agencies, law enforcement academy instructors, experts on crimes motivated by hate and members of the public.

C. In-service law enforcement training, as required pursuant to Section 29-7-7.1 NMSA 1978, shall include at least two hours of instruction that conform with the requirements set forth in Subsection B of this section.

D. Each certified regional law enforcement training facility shall incorporate into its basic law enforcement training and in-service law enforcement training a course of training described in Subsection B of this section that is comparable to or exceeds the standards of the course of instruction developed by the New Mexico law enforcement academy board.

Section 6. REPEAL.--Section 31-18-16.1 NMSA 1978 (being Laws 1980, Chapter 36, Section 1, as amended) is repealed.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE JUDICIARY COMMITTEE SUBSTITUTE
FOR SENATE PUBLIC AFFAIRS COMMITTEE
SUBSTITUTE FOR SENATE BILL 38 AND
SENATE BILL 249, AS AMENDED

CHAPTER 385

CHAPTER 385, LAWS 2003

AN ACT

RELATING TO CAPITAL EXPENDITURES; MAKING GENERAL FUND
APPROPRIATIONS; DECLARING AN EMERGENCY.

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

**Section 1. GENERAL FUND APPROPRIATIONS FROM FISCAL
YEAR 2003--LIMITATIONS--REVERSIONS.--**

A. The general fund appropriations in this act are from fiscal year 2003 and may be expended through fiscal year 2008 except as otherwise provided in this section.

B. Unless otherwise provided, the unexpended balance of an appropriation made in this act from the general fund, including changes to prior appropriations, shall revert to the originating fund as follows:

(1) for projects for which appropriations were made to match federal grants, six months after completion of the project;

(2) for projects for which appropriations were made to purchase vehicles, heavy equipment, educational technology or equipment or furniture that is not related to a more inclusive construction or renovation project, at the end of the fiscal year following the fiscal year in which the appropriation was made for the purchase;

(3) for projects for which appropriations were made to purchase emergency vehicles or other vehicles that require special equipment, at the end of the fiscal year two years following the fiscal year in which the severance tax bonds were issued for the purchase; and

(4) for all other projects for which appropriations were made, within six months of completion of the project, but no later than the end of fiscal year 2008.

C. Except for appropriations to the capital program fund, money from appropriations made in this act shall not be used to pay indirect project costs.

D. For the purpose of this section, "unexpended balance" means the remainder of an appropriation after reserving for unpaid costs and expenses covered by binding written obligations to third parties.

Section 2. AGING PROJECTS--GENERAL FUND.--The following amounts are appropriated from the general fund to the state agency on aging for the following purposes:

1. forty thousand dollars (\$40,000) to plan, design and construct a senior center at Standing Rock chapter of the Navajo Nation in McKinley county;

2. twenty-five thousand dollars (\$25,000) to construct a fitness room at the Alamogordo senior center in Alamogordo in Otero county; and

3. ten thousand dollars (\$10,000) to purchase equipment for the McIntosh senior center in Torrance county.

Section 3. BORDER AUTHORITY--GENERAL FUND.--Ten thousand dollars (\$10,000) is appropriated from the general fund to the border authority to construct and furnish a facility to house the border authority in Santa Teresa in Dona Ana county.

Section 4. COURT PROJECTS.--The following amounts are appropriated from the general fund to the following judicial agencies for the following purposes:

1. to the administrative office of the courts, one hundred twenty-five thousand dollars (\$125,000) for drug court technology statewide;
2. to the fourth judicial district court, sixty thousand dollars (\$60,000) to upgrade and equip court offices in Las Vegas in San Miguel county; and
3. to the thirteenth judicial district court, nine thousand eight hundred dollars (\$9,800) to purchase technology equipment for the court in Sandoval county.

Section 5. CULTURAL AFFAIRS PROJECTS--GENERAL FUND.--The following amounts are appropriated from the general fund to the office of cultural affairs for the following purposes:

1. fifty thousand dollars (\$50,000) to plan, design and construct the education building at the national Hispanic cultural center in Albuquerque in Bernalillo county;
2. twenty-five thousand dollars (\$25,000) to plan, design and construct the education building at the national Hispanic cultural center in Albuquerque in Bernalillo county;
3. twenty-five thousand dollars (\$25,000) to plan, design and construct the education building at the national Hispanic cultural center in Albuquerque in Bernalillo county;
4. sixty thousand dollars (\$60,000) for grading, soil stabilization, sidewalks, parking lots and other infrastructure design and installation at the national atomic museum in Albuquerque in Bernalillo county;
5. one hundred seventy-five thousand dollars (\$175,000) to plan, design and construct the education building at the national Hispanic cultural center in Albuquerque in Bernalillo county;
6. fifteen thousand five hundred dollars (\$15,500) to purchase art by Peter Hurd for the permanent collection for the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county;
7. fifty thousand dollars (\$50,000) for engineering of drainage problems and the bridge site and to relocate the Rio Hondo bridge, including preservation and repair, for the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county; and

8. ten thousand dollars (\$10,000) to purchase art by Peter Hurd for the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county.

Section 6. STATE ENGINEER PROJECTS--GENERAL FUND.--The following amounts are appropriated to the office of the state engineer for the following purposes:

1. fifty thousand dollars (\$50,000) to reconstruct the power dam in Santa Rosa in Guadalupe county; and

2. fifty thousand dollars (\$50,000) to conduct a water survey of the east mountain area of Sandoval, Santa Fe and Bernalillo counties.

Section 7. ENVIRONMENT PROJECTS--GENERAL FUND.--The following amounts are appropriated from the general fund to the department of environment for the following purposes:

1. seventy thousand dollars (\$70,000) for a sewer line for the south valley little league in Albuquerque in Bernalillo county;

2. one hundred thousand dollars (\$100,000) to plan, design and construct phase 3 water system improvements in Tijeras in Bernalillo county;

3. sixty-two thousand dollars (\$62,000) to plan, design and construct a water and wastewater system in San Mateo in Cibola county;

4. forty-five thousand dollars (\$45,000) for repairs to the water treatment plant in Cimarron in Colfax county;

5. fifty thousand dollars (\$50,000) to replace water lines and the loop-feed system in Grady in Curry county;

6. one hundred fifty thousand dollars (\$150,000) to design and construct a surface water treatment plant for the Dona Ana mutual domestic water consumers association in Dona Ana county;

7. twenty-one thousand dollars (\$21,000) to improve the Callejon Guerra sewer collection system in Mesilla in Dona Ana county;

8. fifty thousand dollars (\$50,000) to replace water lines and make water system improvements in Lovington in Lea county;

9. one hundred thousand dollars (\$100,000) to construct a water line in Bloomfield in San Juan county;

10. one hundred thousand dollars (\$100,000) to construct a water line for the Flora Vista water users association in Flora Vista in San Juan county;

11. seventy-five thousand dollars (\$75,000) to drill test holes to locate an aquifer for municipal water development in Truth or Consequences in Sierra county; and

12. one hundred thousand dollars (\$100,000) for water and wastewater projects in Red River in Taos county.

Section 8. STATE FAIR PROJECT--GENERAL FUND.--Fifteen thousand dollars (\$15,000) is appropriated from the general fund to the state fair commission for improvements to the New Mexico state fair in Albuquerque in Bernalillo county.

Section 9. HEALTH PROJECTS--GENERAL FUND.--One hundred thousand dollars (\$100,000) is appropriated from the general fund to the department of health to purchase medical and operational equipment for the Roosevelt county special hospital district in Roosevelt county.

Section 10. HIGHWAY AND TRANSPORTATION PROJECTS--GENERAL FUND.--The following amounts are appropriated from the general fund to the state highway and transportation department for the following purposes:

1. two hundred seventy-five thousand dollars (\$275,000) for improvements to Loma Larga road in Corrales in Bernalillo and Sandoval counties;

2. seventy-five thousand dollars (\$75,000) for improvements to Loma Larga road in Corrales in Bernalillo and Sandoval counties;

3. one hundred fifteen thousand dollars (\$115,000) to pave streets in north Albuquerque acres in Bernalillo county;

4. one hundred ten thousand five hundred dollars (\$110,500) to improve and construct Payan road in Las Cruces in Dona Ana county;

5. one hundred thousand dollars (\$100,000) to pave the access to the health clinic in Lordsburg in Hidalgo county;

6. one hundred twenty-five thousand dollars (\$125,000) for phase 1 extension of Cedar street in Deming in Luna county;

7. fifty thousand dollars (\$50,000) to improve the Rehoboth extension from the Gallup city limits east to Sundance road in McKinley county;

8. forty-five thousand dollars (\$45,000) to surface and make improvements to Cousins road in McKinley county;

9. fifty thousand dollars (\$50,000) to surface and make improvements to Williams Acres road in McKinley county; and

10. thirty thousand dollars (\$30,000) to purchase a sand spreader and support rack for Rio Rancho in Sandoval county.

Section 11. INDIAN PROJECTS--GENERAL FUND.--The following amounts are appropriated to the New Mexico office of Indian affairs:

1. twenty-five thousand dollars (\$25,000) to plan and design an outdoor youth recreation center for the Ramah chapter of the Navajo Nation in Cibola county;

2. twenty-five thousand dollars (\$25,000) to plan, design and construct an outdoor running track and install a fence around the Shiwi Tsana playground park development in the Pueblo of Zuni in McKinley county;

3. twenty-five thousand dollars (\$25,000) to plan, design and construct the renovation of the youth center at the Pueblo of Zuni in McKinley county;

4. three hundred thousand dollars (\$300,000) to expand, improve and construct road yards and highway maintenance facilities for the chapters of the Navajo Nation in northwest New Mexico;

5. three hundred thousand dollars (\$300,000) to purchase road equipment and expand, improve and construct road yards and highway maintenance facilities for the chapters of the Navajo Nation in northwestern New Mexico;

6. fifty thousand dollars (\$50,000) for improvements and construction at the fire department in Mescalero in Otero county; and

7. thirty-five thousand dollars (\$35,000) for the construction of the final phase of the arts, crafts, visitor and administration center for the eight northern Indian pueblos council in the Pueblo of San Juan in Rio Arriba county.

Section 12. LOCAL GOVERNMENT PROJECTS--GENERAL FUND.--The following amounts are appropriated from the general fund to the local government division of the department of finance and administration for the following purposes:

1. two hundred thousand dollars (\$200,000) to renovate the Hiland theater in Albuquerque in Bernalillo county;

2. one hundred thousand dollars (\$100,000) to construct a bike path on the west side of Tramway from the Copper street pedestrian bridge to the Lomas-Tramway library and to purchase an artistic statue for the children's playground at the recreation facility in Albuquerque in Bernalillo county;

3. ninety thousand dollars (\$90,000) to acquire land in the Paradise Hills neighborhood of Bernalillo county to expand soccer and little league facilities, including parking;

4. thirty-five thousand dollars (\$35,000) for field improvements, including batting cages, dugouts, gates, safety netting and score boxes, for Paradise Hills little league in Albuquerque in Bernalillo county;

5. fifty-eight thousand dollars (\$58,000) for site improvements, including erosion control, bleachers, picnic tables, shade structures and walkways for the Paradise Hills little league in Albuquerque in Bernalillo county;

6. sixty-two thousand dollars (\$62,000) to construct the community center at Taylor Ranch in Albuquerque in Bernalillo county;

7. one hundred thousand dollars (\$100,000) to acquire land for and design and construct improvements to north Domingo Baca park and community center in Albuquerque in Bernalillo county;

8. thirty-five thousand dollars (\$35,000) for equipment, furnishings and other improvements to the Cherry Hills library in Albuquerque in Bernalillo county;

9. twenty thousand dollars (\$20,000) to improve the Los Padillas community center in Albuquerque in Bernalillo county;

10. fifteen thousand dollars (\$15,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

11. thirty thousand dollars (\$30,000) to plan, design and construct a bicycle trail and pedestrian and landscaping improvements on the southeast corner of Montgomery and Tramway boulevards in Albuquerque in Bernalillo county;

12. fifty thousand dollars (\$50,000) to plan, design and construct improvements to open space trails and parking lots in Albuquerque in Bernalillo county;

13. thirty thousand dollars (\$30,000) to plan, design and construct improvements at the Casa Grande linear park in Albuquerque in Bernalillo county;

14. seventy thousand dollars (\$70,000) for equipment and improvements for the Roadrunner little league in Albuquerque in Bernalillo county;

15. one hundred thousand dollars (\$100,000) to purchase property and a building or plan, design and construct a building for the business incubator program in Albuquerque in Bernalillo county;

16. ten thousand dollars (\$10,000) for information technology at the main library in Albuquerque in Bernalillo county;

17. twenty-five thousand dollars (\$25,000) to design, develop, fabricate, construct, purchase and install exhibits, furniture, fixtures and equipment at the Explora science center and children's museum in Albuquerque in Bernalillo county;

18. ten thousand dollars (\$10,000) for reforestation and landscaping in the University Heights neighborhood in Albuquerque in Bernalillo county;

19. twenty-five thousand dollars (\$25,000) for exhibits, furniture, fixtures and equipment at the Explora science center and children's museum in Albuquerque in Bernalillo county;

20. two hundred twenty-five thousand dollars (\$225,000) for phase 5 improvements at the balloon fiesta park in Bernalillo county;

21. fifty thousand dollars (\$50,000) to construct, improve, equip and furnish phases 2 and 3 at the southeast New Mexico historical center's archives building in Roswell in Chaves county;

22. fifty thousand dollars (\$50,000) for phase 2 construction, including engineering and architectural costs, of the central fire station in Dexter in Chaves county;

23. fifty thousand dollars (\$50,000) to continue phase 3 construction, including lighting, landscaping and fields, for the Hagerman sports complex and little league fields in Chaves county;

24. fifty thousand dollars (\$50,000) for a multipurpose room at the head start center in Grants in Cibola county;

25. twenty-five thousand dollars (\$25,000) to purchase a vehicle for Grants in Cibola county;

26. sixty thousand dollars (\$60,000) to purchase street equipment for Grants in Cibola county;

27. fifty thousand dollars (\$50,000) to purchase a weed cutter for the Cibola county road department;
28. three thousand five hundred dollars (\$3,500) to purchase a broom for the Cibola county road department;
29. thirteen thousand five hundred dollars (\$13,500) to purchase a vehicle for the animal control office in Milan in Cibola county;
30. seven thousand five hundred dollars (\$7,500) to design and construct a memorial wall at Veterans' park in Las Cruces honoring Dona Ana county veterans who served during World War II and the Korean war;
31. ten thousand dollars (\$10,000) to purchase and install global positioning system equipment for patrol cars for the sheriff's department in Dona Ana county;
32. twenty-five thousand dollars (\$25,000) for the Mesilla Park community center in Las Cruces in Dona Ana county;
33. seven thousand five hundred dollars (\$7,500) to design and construct a memorial wall at Veterans' park in Las Cruces honoring Dona Ana county veterans who served during World War II and the Korean war;
34. fifty thousand dollars (\$50,000) to purchase and install fixtures, furnishings and equipment for the First Step pediatrics and women's services center in Las Cruces in Dona Ana county;
35. ninety-six thousand dollars (\$96,000) to improve community support facilities in San Miguel in Dona Ana county;
36. ten thousand dollars (\$10,000) to purchase and install global positioning system equipment for patrol cars for the sheriff's department in Dona Ana county;
37. seven thousand five hundred dollars (\$7,500) to design and construct a memorial wall at Veterans' park in Las Cruces honoring Dona Ana county veterans who served during World War II and the Korean war;
38. ten thousand dollars (\$10,000) for site preparation of, planning, designing, repairing and constructing the Las Cruces downtown revitalization project in Dona Ana county;
39. fifty thousand dollars (\$50,000) to construct an aircraft hangar for the civil air patrol aircraft based at the Las Cruces municipal airport in Dona Ana county;

40. seven thousand dollars (\$7,000) for defibrillators for the Las Alturas fire station in Dona Ana county;
41. one hundred thousand dollars (\$100,000) for capital improvements at the sheriff posse rodeo arena in Eddy county;
42. one hundred fifty thousand dollars (\$150,000) to renovate the Grant county detention center;
43. fifty thousand dollars (\$50,000) for the purchase of a backhoe for Guadalupe county;
44. two hundred thousand dollars (\$200,000) for phase 4 improvements in Del Norte park in Hobbs in Lea county;
45. one hundred thousand dollars (\$100,000) to purchase a wastewater vacuum truck in Lovington in Lea county;
46. one hundred thousand dollars (\$100,000) for phase 4 improvements in Del Norte park in Hobbs in Lea county;
47. three hundred thousand dollars (\$300,000) to construct a fire station for Ruidoso in Lincoln county;
48. ten thousand dollars (\$10,000) to purchase and install information technology for the McKinley county sheriff's office;
49. fifteen thousand dollars (\$15,000) for restroom improvements at the soccer fields in Gallup in McKinley county;
50. two hundred thousand dollars (\$200,000) to construct, equip and furnish a safety facility and municipal court building in Tularosa in Otero county;
51. forty-two thousand five hundred dollars (\$42,500) to construct, equip, furnish and landscape a veterans' memorial at the Tularosa community center in Otero county;
52. fifteen thousand dollars (\$15,000) to improve and equip Zenith park in Cloudcroft in Otero county;
53. fifty-five thousand dollars (\$55,000) for improvements and equipment purchase for the recreation center in Tucumcari in Quay county;
54. twenty-five thousand dollars (\$25,000) to plan a recreational facility master plan for the Prince and Carter ranches in Espanola in Rio Arriba county;

55. one hundred thousand dollars (\$100,000) for improvements to McGee park county fairgrounds in San Juan county;

56. forty thousand dollars (\$40,000) to demolish an existing structure and develop and construct a public facility as part of a downtown revitalization project in Las Vegas in San Miguel county;

57. twenty-five thousand dollars (\$25,000) to purchase and equip a self-contained breathing apparatus for the Las Vegas fire department in San Miguel county;

58. ten thousand dollars (\$10,000) to construct additions to the Jemez Springs volunteer fire department building in Sandoval county;

59. five thousand dollars (\$5,000) to renovate Santa Fe Cathedral park in Santa Fe county;

60. fifty thousand dollars (\$50,000) to plan, design and engineer the redevelopment of the Santa Fe railyard in Santa Fe in Santa Fe county;

61. twenty-five thousand dollars (\$25,000) to renovate Sedillo park in Socorro in Socorro county;

62. two hundred thousand dollars (\$200,000) to plan, design and construct an emergency response center in Taos county;

63. one thousand two hundred dollars (\$1,200) to purchase and install freezers for the community action office in Valencia county;

64. fifty thousand dollars (\$50,000) to purchase buses for the head start program in Valencia county;

65. fifty thousand dollars (\$50,000) for video and audio equipment for the library in Belen in Valencia county;

66. forty thousand dollars (\$40,000) to purchase and install a security system for the courthouse in Valencia county; and

67. fifty thousand dollars (\$50,000) for phase 2 construction of the fire station and community center for the Highland Meadows community in Valencia county.

Section 13. STATE PARK PROJECTS--GENERAL FUND.--Twenty-five thousand dollars (\$25,000) is appropriated to the state parks division of the energy, minerals and natural resources department to acquire land for, plan and construct the Mesilla Valley bosque park in Dona Ana county.

Section 14. PUBLIC SCHOOL PROJECTS--GENERAL FUND.--The following amounts are appropriated from the general fund to the state department of public education for the following purposes:

1. seventy-five thousand dollars (\$75,000) to design and construct a facility for the Nuestros Valores charter school in the Albuquerque public school district in Albuquerque in Bernalillo county;

2. seventy thousand dollars (\$70,000) for educational technology at Mountain View elementary school in the Albuquerque public school district in Bernalillo county;

3. twenty-five thousand dollars (\$25,000) to construct facilities, including locker rooms, restrooms and offices, for the soccer and softball programs at Rio Grande high school in the Albuquerque public school district in Bernalillo county;

4. twenty-five thousand dollars (\$25,000) for portable classrooms at South Valley academy in the Albuquerque public school district in Bernalillo county;

5. ten thousand dollars (\$10,000) for mariachi uniforms for East San Jose elementary school in the Albuquerque public school district in Bernalillo county;

6. twenty-five thousand dollars (\$25,000) for capital improvements at Jimmy E. Carter middle school in the Albuquerque public school district in Bernalillo county;

7. fifteen thousand dollars (\$15,000) for educational technology, including a digital plasma screen, for the southwest secondary learning center in the Albuquerque public school district in Bernalillo county;

8. sixty thousand dollars (\$60,000) for educational technology for the Manzano high school cluster in the Albuquerque public school district in Bernalillo county;

9. five thousand three hundred dollars (\$5,300) to furnish the library at Valle Vista elementary school in the Albuquerque public school district in Bernalillo county;

10. eighty thousand dollars (\$80,000) for infrastructure improvements at Jefferson Montessori academy in the Carlsbad municipal school district in Eddy county;

11. fifteen thousand dollars (\$15,000) for capital improvements at the Gallup high school field and track facilities in the Gallup-McKinley county public school district in McKinley county;

12. two hundred twenty thousand dollars (\$220,000) to replace the roof on the elementary and middle school in the Cloudcroft municipal school district in Otero county;

13. seventy-five thousand dollars (\$75,000) to plan, design and construct a district technology center in the Espanola public school district in Rio Arriba county;

14. one hundred fifty thousand dollars (\$150,000) to improve and equip the athletic weight room at Socorro high school in the Socorro consolidated school district in Socorro county;

15. twenty-five thousand dollars (\$25,000) for capital improvements, including electrical and plumbing, to the Adelino head start center at the Belen consolidated school district in Valencia county; and

16. eighty-five thousand dollars (\$85,000) to purchase and install lighting at the baseball and softball fields at the high school in the Belen consolidated school district in Valencia county.

Section 15. UNIVERSITY AND COLLEGE PROJECTS--GENERAL FUND.--

A. To the board of regents of eastern New Mexico university, the following amounts are appropriated from the general fund for the following purposes:

(1) one hundred thousand dollars (\$100,000) to purchase a bus for the athletic department at the main campus in Portales in Roosevelt county;

(2) twenty-five thousand dollars (\$25,000) to purchase a computer system for the athletic department at the main campus in Portales in Roosevelt county;

(3) fifty thousand dollars (\$50,000) for distance education infrastructure at the main campus in Portales in Roosevelt county; and

(4) twenty-five thousand dollars (\$25,000) for the renovation and addition of parking lot lights, sidewalk lighting and sidewalk repair at the main campus in Portales in Roosevelt county.

B. To board of regents of New Mexico highlands university, fifty thousand dollars (\$50,000) is appropriated from the general fund to plan and design the center for the education and study of diverse populations at New Mexico highlands university in San Miguel county.

C. To the board of regents of New Mexico state university, ten thousand dollars (\$10,000) is appropriated from the general fund for crosswalk improvements at the main campus in Las Cruces in Dona Ana county;

D. To the board of regents of the university of New Mexico, the following amounts are appropriated from the general fund for the following purposes:

(1) twenty-five thousand dollars (\$25,000) for improvements to the heating, ventilation and air conditioning system at the athletic department administration building at the main campus in Albuquerque in Bernalillo county;

(2) fifteen thousand dollars (\$15,000) for improvements to the women's softball complex, including bleachers, dugouts, fencing, grading and sod, at the main campus in Albuquerque in Bernalillo county;

(3) fifty thousand dollars (\$50,000) to purchase, install and upgrade information technology and equipment at the school of law in Albuquerque in Bernalillo county;

(4) fifty thousand dollars (\$50,000) for improvements to the football practice fields at the main campus in Bernalillo county; and

(5) fifty thousand dollars (\$50,000) to purchase and install equipment at the athletic administration building at the main campus in Albuquerque in Bernalillo county.

E. To the governing board of Luna vocational-technical institute, twenty thousand dollars (\$20,000) is appropriated from the general fund to restore King stadium in San Miguel county.

Section 16. PROJECT SCOPE--EXPENDITURES.--If an appropriation for a project authorized in this act is not sufficient to complete all the purposes specified, the appropriation may be expended for any portion of the purposes specified in the appropriation. Expenditures shall not be made for purposes other than those specified in the appropriation.

Section 17. ART IN PUBLIC PLACES.--Pursuant to Section 13-4A-4 NMSA 1978 and where applicable, the appropriations authorized in this act include one percent for the art in public places fund.

Section 18. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

FOR SENATE BILL 134, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 386

CHAPTER 386, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; CHANGING THE CALCULATION FOR DETERMINING ENROLLMENT GROWTH PROGRAM UNITS.

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

Section 1. Section 22-8-23.1 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 3, Section 7, as amended) is amended to read:

"22-8-23.1. ENROLLMENT GROWTH PROGRAM UNITS.--

A. A school district with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated as follows:

(Current Year MEM - Previous Year MEM)

X 100 = Percent Increase

Previous Year MEM

The number of additional program units shall be calculated as follows:

$(\text{Current Year MEM} - \text{Previous Year MEM}) - (\text{Current Year MEM} \times .01) \times 1.5 = \text{Units.}$

B. In addition to the units calculated in Subsection A of this section, a school district with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated in the following manner:

(Current Year MEM - Previous Year MEM)

X 100 = Percent Increase.

Previous Year MEM

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:

$$((\text{Current Year MEM} - \text{Previous Year MEM}) \times .50 = \text{Units}).$$

C. As used in this section:

(1) "current year MEM" means MEM on the fortieth day of the current year;

(2) "MEM" means the total school district membership, including early childhood education full-time equivalent membership and special education membership, but excluding full-day kindergarten membership for the first year that full-day kindergarten is implemented in a school pursuant to Subsection D of Section 22-2-19 NMSA 1978; and

(3) "previous year MEM" means MEM on the fortieth day of the previous year."

SENATE BILL 231, AS AMENDED

CHAPTER 387

CHAPTER 387, LAWS 2003

AN ACT

RELATING TO DOMESTIC VIOLENCE; IMPOSING A FEE UPON OFFENDERS; CREATING A FUND; MAKING AN APPROPRIATION TO DEFRAY THE COST OF PROVIDING TREATMENT TO DOMESTIC VIOLENCE OFFENDERS.

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

Section 1. A new section of Chapter 34, Article 6 NMSA 1978 is enacted to read:

"COURT FEES--DEPOSIT IN THE DOMESTIC VIOLENCE OFFENDER TREATMENT FUND.--

A. In addition to any other fees collected in the district court, metropolitan court and magistrate court, those courts shall assess and collect from a person

convicted of a penalty assessment misdemeanor, traffic violation, petty misdemeanor, misdemeanor or felony offense a "domestic violence offender treatment fee" of five dollars (\$5.00).

B. Domestic violence offender treatment fees shall be deposited in the domestic violence offender treatment fund."

Section 2. DOMESTIC VIOLENCE OFFENDER TREATMENT FUND CREATED--APPROPRIATION--PROGRAM REQUIREMENTS.--

A. The "domestic violence offender treatment fund" is created in the state treasury. All fees collected pursuant to the provisions of Section 1 of this shall be transmitted monthly to the department of finance and administration for credit to the domestic violence offender treatment fund.

B. Balances in the domestic violence offender treatment fund are appropriated to the children, youth and families department to provide funds to domestic violence offender treatment programs to defray the cost of providing treatment to domestic violence offenders. Unexpended or unencumbered balances remaining in the fund at the end of any fiscal year shall not revert to the general fund.

C. Payment out of the domestic violence offender treatment fund shall be made on vouchers issued and signed by the secretary of children, youth and families upon warrants drawn by the department of finance and administration.

D. In order to be eligible for money from the domestic violence offender treatment fund, a domestic violence offender treatment program shall include the following components in its program:

(1) an initial assessment to determine if a domestic violence offender will benefit from participation in the program;

(2) a written contract, which must be signed by the domestic violence offender, that sets forth:

(a) attendance and participation requirements;

(b) consequences for failure to attend or participate in the program; and

(c) a confidentiality clause that prohibits disclosure of information revealed during treatment sessions;

(3) strategies to hold domestic violence offenders accountable for their violent behavior;

(4) a requirement that group discussions are limited to members of the same gender;

(5) an education component that:

(a) defines physical, emotional, sexual, economic and verbal abuse and techniques for stopping those forms of abuse; and

(b) examines gender roles, socialization, the nature of violence, the dynamics of power and control and the effects of domestic violence on children;

(6) a requirement that a domestic violence offender not be under the influence of alcohol or drugs during a treatment session;

(7) a requirement that the program provide monthly written reports to the presiding judge or the domestic violence offender's probation or parole officer regarding:

(a) proof of the domestic violence offender's enrollment in the program;

(b) progress reports that address the domestic violence offender's attendance, fee payments and compliance with other program requirements; and

(c) evaluations of progress made by the domestic violence offender and recommendations as to whether or not to require the offender's further participation in the program; and

(8) a requirement that the term of the program be at least fifty-two weeks.

E. Counseling for couples shall not be a component of a domestic violence offender treatment program.

F. As used in this section, "domestic violence offender" means:

(1) a person convicted for an offense pursuant to the provisions of the Crimes Against Household Members Act; or

(2) a person convicted for violating an order of protection granted by a court pursuant to the provisions of the Family Violence Protection Act.

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 327, AS AMENDED

CHAPTER 388

CHAPTER 388, LAWS 2003

AN ACT

RELATING TO HIGHER EDUCATION; CREATING THE HIGHER EDUCATION PERFORMANCE FUND TO FUND ACHIEVEMENT AT PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS; PROVIDING POWERS AND DUTIES.

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

Section 1. HIGHER EDUCATION PERFORMANCE FUND--CREATED-- -ADMINISTRATION--DISTRIBUTIONS.--

A. The "higher education performance fund" is created in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Money in the fund shall not revert to any other fund. The fund shall be administered by the commission on higher education and money in the fund is appropriated to the commission for distributions to public post-secondary educational institutions.

B. The commission shall distribute money in the fund annually to each public post-secondary educational institution that met its performance standards in the preceding year.

C. The commission shall develop rules for the assessment of performance measures and standards for public post-secondary educational institutions and shall annually assess the performance of each institution according to those measures and standards.

SENATE BILL 369

CHAPTER 389

CHAPTER 389, LAWS 2003

AN ACT

RELATING TO HIGHER EDUCATION; PROVIDING A MEANS FOR POST-SECONDARY EDUCATIONAL INSTITUTIONS TO ADDRESS AND IMPROVE THE STATE'S RESPONSE TO CRITICAL SOCIAL, ECONOMIC, EDUCATIONAL AND OTHER ISSUES; CREATING THE HIGHER EDUCATION PROGRAM DEVELOPMENT ENHANCEMENT FUND.

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

Section 1. HIGHER EDUCATION PROGRAM DEVELOPMENT ENHANCEMENT FUND--PURPOSE.--

A. The "higher education program development enhancement fund" is created in the state treasury. All income earned on investment of the fund shall be credited to the fund and money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the commission on higher education and money in the fund is appropriated to the commission to carry out the purposes of this section. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission on higher education or his authorized representative.

B. The higher education program development enhancement fund shall be used to enhance the contribution of post-secondary educational institutions to the resolution of critical state issues and the advancement of the welfare of state citizens.

C. At the beginning of each fiscal year in which the commission determines that the balance of the fund is sufficient to make awards, the commission shall define or reaffirm no more than four critical issues to be addressed through awards from the fund. Issues to be addressed may include:

(1) expanding instructional programs to meet critical statewide work force and professional training needs;

(2) enhancing instructional programs that provide employment opportunity for New Mexico students in a global economy; and

(3) developing mission-specific instructional programs that build on existing institutional academic strengths.

D. The commission shall establish criteria and procedures for making awards from the fund based on evaluation of competitive proposals submitted by post-secondary educational institutions. Each winning proposal shall address at least one of the critical issues defined for use of the fund that year. Criteria may include:

(1) collaboration among educational agencies and other public or private entities that demonstrate a competency regarding the issues addressed by the proposal;

(2) the commitment of matching money; and

(3) evaluation components.

E. The commission shall report annually to the legislature and the governor on the status of the fund and projects supported by the fund.

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 370

CHAPTER 390

CHAPTER 390, LAWS 2003

AN ACT

RELATING TO HIGHER EDUCATION; ELIMINATING THE REQUIREMENT THAT CERTAIN TWO-YEAR INSTITUTIONS MUST USE ALL OTHER SCHOLARSHIP FUNDS BEFORE GRANTING ANY LOTTERY TUITION SCHOLARSHIPS.

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

Section 1. Section 21-13-10 NMSA 1978 (being Laws 1963, Chapter 17, Section 9, as amended) is amended to read:

"21-13-10. BOARD DUTIES.--

A. It is the duty of the community college board to determine financial and educational policies of the community college. The community college board shall provide for the management of the community college and execution of these policies by selecting a competent president for the community college, and, upon the president's recommendation, the board shall employ other administrative personnel, instructional staff or other personnel as may be needed for the operation, maintenance and administration of the community college.

B. The community college board shall have the power to fix tuition and fee rates for resident and nonresident students of the district, to accept gifts, to accept

federal aid, to purchase, hold, sell and rent property and equipment and to promote the general welfare of the institution for the best interest of educational service to the people of the community college district.

C. To the extent that funds are made available by the legislature from the lottery tuition fund, the community college board shall award tuition scholarships for qualified resident students attending their respective institutions.

D. The tuition scholarships authorized in this section shall apply only to full-time resident students who, immediately upon completion of a high school curriculum at a public or accredited private New Mexico high school or upon receiving a graduate equivalent diploma, are accepted for entrance to and attend a community college. Each tuition scholarship shall be awarded for up to two consecutive years beginning the second semester of the recipient's first year of enrollment, provided that the recipient has maintained residency in New Mexico and maintained a grade-point average of 2.5 or higher on a 4.0 scale during his first semester of full-time enrollment.

E. The commission on higher education shall prepare guidelines setting forth explicit student continuing eligibility criteria and guidelines for administration of the tuition scholarship program. Guidelines shall be distributed to community college boards to enable a uniform availability of the resident student tuition scholarships."

Section 2. Section 21-13-19 NMSA 1978 (being Laws 1968, Chapter 70, Section 2, as amended) is amended to read:

"21-13-19. ENROLLMENT DEFINED--PAYMENTS.--

A. For those students in community colleges taking college-level courses, full-time-equivalent students shall be defined and computed by the commission on higher education in the same manner in which it defines and computes full-time-equivalent students for all other college-level programs within its jurisdiction.

B. No student shall be included in any calculations made under the provisions of this section if the student is enrolled in a course the cost of which is totally reimbursed from federal, state or private sources. The public school district shall transfer to the community college the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the community college.

C. The commission on higher education shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any community college that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, or any community college that reduces a previously authorized tax

levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

D. The commission on higher education shall require from the community college such reports as the commission deems necessary for the purpose of determining the number of full-time-equivalent students at the community college eligible to receive support under this section.

E. A community college board shall establish tuition and fee rates for its respective institutions for full-time, part-time, resident and nonresident students, as defined by the commission on higher education.

F. A community college board 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. The gratis scholarships are in addition to the lottery tuition scholarships authorized in Section 21-13-10 NMSA 1978 and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection 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 community college board 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 community college board each year shall be granted on the basis of financial need."

Section 3. Section 21-16-10 NMSA 1978 (being Laws 1968, Chapter 59, Section 3, as amended) is amended to read:

"21-16-10. APPROPRIATION--DISTRIBUTION.--

A. The commission on higher education shall recommend an appropriation for each technical and vocational institute based upon its financial requirements in relation to its authorized program and its available funds from non-general fund sources; provided, the recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student.

B. The commission on higher education shall by rule provide for the method for calculating the number of full-time-equivalent students in technical and vocational institutes. No student shall be included in any calculation of the number of full-time-equivalent students if the student is enrolled in a course, the cost of which is totally reimbursed from federal, state or private sources. The public school district shall transfer to the technical and vocational institute the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the technical and vocational institute.

C. The commission on higher education shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any technical and vocational institute that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, or any technical and vocational institute that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

D. The board 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. The gratis scholarships are in addition to the lottery tuition scholarships authorized in Section 21-16-10.1 NMSA 1978 and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection shall not exceed three percent of the preceding fall semester enrollment in the technical and vocational institute and shall not be established and granted for summer sessions. The president of the technical and vocational institute shall select and recommend to the board 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 the board each year shall be granted on the basis of financial need."

Section 4. Section 21-16-10.1 NMSA 1978 (being Laws 1996, Chapter 71, Section 6, as amended) is amended to read:

"21-16-10.1. TUITION SCHOLARSHIPS AUTHORIZED.--

A. To the extent that funds are made available by the legislature from the lottery tuition fund, the board of a technical and vocational institute shall award tuition scholarships for qualified resident students attending a technical and vocational institute.

B. The tuition scholarships authorized in this section shall apply only to full-time resident students who, immediately upon completion of a high school curriculum at a public or accredited private New Mexico high school or upon receiving a graduate equivalent diploma, are accepted for entrance to and attend a technical and vocational institute. Each tuition scholarship shall be awarded for up to two consecutive years beginning the second semester of the recipient's first year of enrollment, provided that the recipient has maintained residency in New Mexico and maintained a grade-point average of 2.5 or higher on a 4.0 scale during his first semester of full-time enrollment with renewal of an additional two years upon transfer.

C. The commission on higher education shall prepare guidelines setting forth explicit student continuing eligibility criteria and guidelines for administration of the

tuition scholarship program. Guidelines shall be distributed to the boards of technical and vocational institutes to enable a uniform availability of the resident student tuition scholarships."

SENATE FINANCE COMMITTEE

SUBSTITUTE FOR SENATE BILL 377

CHAPTER 391

CHAPTER 391, LAWS 2003

AN ACT

RELATING TO INSURANCE; REQUIRING GROUP HEALTH CARE COVERAGE OF UNMARRIED DEPENDENTS UNTIL THEIR TWENTY-FIFTH BIRTHDAY.

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

Section 1. Section 13-7-1 NMSA 1978 (being Laws 1997, Chapter 74, Section 1) is amended to read:

"13-7-1. SHORT TITLE.--Chapter 13, Article 7 NMSA 1978 may be cited as the "Health Care Purchasing Act"."

Section 2. A new section of the Health Care Purchasing Act is enacted to read:

"MAXIMUM AGE OF DEPENDENT.--Any group health care coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act on or after July 1, 2003 that offers coverage of an insured's dependent shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's twenty-fifth birthday, regardless of whether the dependent is enrolled in an educational institution."

Section 3. A new section of Chapter 59A, Article 23 NMSA 1978 is enacted to read:

"MAXIMUM AGE OF DEPENDENT.--Each blanket or group health policy or certificate of insurance delivered, issued for delivery or renewed in New Mexico on or after July 1, 2003 that provides coverage for an insured's dependent shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the

dependent's twenty-fifth birthday, regardless of whether the dependent is enrolled in an educational institution."

Section 4. Section 59A-23D-2 NMSA 1978 (being Laws 1995, Chapter 93, Section 2, as amended by Laws 1997, Chapter 243, Section 27 and also by Laws 1997, Chapter 254, 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 New Mexico Insurance Code; or

(4) a person approved by the federal secretary of health and human services;

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 insurance division of the public regulation commission;

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; 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 5. A new section of the Health Maintenance Organization Law is enacted to read:

"MAXIMUM AGE OF DEPENDENT.--Each group health maintenance organization contract delivered or issued for delivery in New Mexico on or after July 1,

2003 that provides coverage for an enrollee's dependents shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's twenty-fifth birthday, regardless of whether the dependent is enrolled in an educational institution; provided that this requirement does not apply to the medicaid managed care system."

Section 6. Section 59A-47-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 878) is amended to read:

"59A-47-1. SHORT TITLE.--Chapter 59A, Article 47 NMSA 1978 may be cited as the "Nonprofit Health Care Plan Law"."

Section 7. A new section of the Nonprofit Health Care Plan Law is enacted to read:

"MAXIMUM AGE OF DEPENDENT.--Any group subscriber contract offered, issued or renewed in New Mexico on or after July 1, 2003 that provides coverage of a subscriber's dependents shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's twenty-fifth birthday, regardless of whether the dependent is enrolled in an educational institution."

Section 8. Section 59A-56-3 NMSA 1978 (being Laws 1994, Chapter 75, Section 3, as amended) 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 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 federal Social Security Act;

(4) Title 19 of the federal 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 Medical 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 insurance division of the commission;

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 who:

(a) 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 P, N and D of Section 59A-23E-2 NMSA 1978, 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) is entitled to continuation coverage pursuant to Section 59A-56-20 or 59A-23E-19 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 health insurance coverage as defined in Subsection R of Section 59A-23E-2 NMSA 1978;

(d) during the most recent coverage within the coverage period described in Subparagraph (a) of Paragraph (1) of this subsection 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 59A-23E-2 NMSA 1978, 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 and 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 fewer 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;

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."

SENATE FINANCE COMMITTEE SUBSTITUTE
FOR SENATE BILL 457, AS AMENDED

CHAPTER 392

CHAPTER 392, LAWS 2003

AN ACT

RELATING TO HIGHER EDUCATION; PROVIDING FOR ADDITIONAL ENDOWED CHAIRS AT MAJOR RESEARCH INSTITUTIONS FOR THE PURPOSE OF ECONOMIC DEVELOPMENT.

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

Section 1. Section 21-1-27.1 NMSA 1978 (being Laws 2002, Chapter 31, Section 1) is amended to read:

"21-1-27.1. FACULTY ENDOWMENT FUND CREATED.--

A. The "faculty endowment fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests. Money in the fund shall not revert at the end of any fiscal year.

B. The faculty endowment fund shall be administered by the commission on higher education. Except as provided in Subsection J of this section, money shall be disbursed only on warrant of the secretary of finance and administration upon voucher signed by the executive director of the commission on higher education or his authorized representative.

C. Money shall be disbursed from the faculty endowment fund only to establish endowments for chairs, professorships and faculty development programs at four-year public post-secondary educational institutions as provided in this section. Except as provided in Subsection J of this section, an institution shall not receive a disbursement for an endowment until that institution has notified the commission on higher education that it has received matching funds for the endowment from other than governmental sources in an amount that is equal to or greater than the amount authorized by this section to be disbursed for the endowment.

D. Except as provided in Subsection J of this section, money in the faculty endowment fund is appropriated to the commission on higher education to be disbursed for the following endowment purposes in the following amounts:

(1) for endowed chairs, five hundred thousand dollars (\$500,000) for each endowed chair;

(2) for endowed professorships, two hundred thousand dollars (\$200,000) for each endowed professorship; and

(3) for endowed faculty development programs, to include lectureships, graduate fellowships and other faculty support programs, thirty-seven thousand five hundred dollars (\$37,500) for each endowed faculty development program.

E. Except as provided in Subsection J of this section, until June 30, 2005, the following institutions shall be eligible for the following disbursements from the fund:

(1) the university of New Mexico for four endowed chairs;

(2) New Mexico state university for four endowed chairs;

(3) New Mexico institute of mining and technology for two endowed chairs;

(4) the university of New Mexico for two endowed chairs at the university of New Mexico medical center; and

(5) the university of New Mexico, New Mexico state university, New Mexico highlands university, New Mexico institute of mining and technology, western New Mexico university and eastern New Mexico university for endowed professorships

and endowed faculty development programs. The number of endowed professorships and endowed faculty development programs allocated to each of the named institutions shall be in the same ratio to the total number of endowed professorships and endowed faculty development programs allocated to all of the named institutions as the main campus full-time-equivalent enrollment of the institution bears to the total main campus full-time-equivalent enrollment of all of the named institutions. For purposes of this paragraph, the main campus full-time-equivalent enrollment of each institution shall be based on enrollment figures for the second semester of the 2001-2002 school year.

F. On or after July 1, 2005, money remaining in the faculty endowment fund shall be available for additional disbursements by the commission on higher education to any of the institutions named in this section, subject to receipt of matching funds. Disbursements may be made based on the date requests for additional disbursement are received by the commission.

G. The endowment funds of the institutions shall not be expended but shall be invested by the institutions in accordance with the prudent man rule, and in accordance with the provisions of Section 21-1-38 NMSA 1978. The income from the investments shall be used by the institutions to provide funding for chairs, professorships and faculty development programs, including paying all or a portion of the salary of the faculty member or the expenses necessary to support associated academic activities.

H. Except as provided in Subsection J of this section, disbursements of the faculty endowment fund by the commission on higher education shall be allocated as follows:

(1) fifty percent of the disbursements shall be for endowed chairs;

(2) thirty-five percent of the disbursements shall be for endowed professorships; and

(3) fifteen percent of the disbursements shall be for endowed faculty development programs.

I. If the disbursements allocated for endowed chairs are not sufficient to fund the number of positions specified in Paragraphs (1) through (4) of Subsection E of this section, the number of endowed chairs for each of those four institutions shall be proportioned by the commission on higher education in the same manner as endowed professorships and endowed faculty development programs are proportioned in Paragraph (5) of Subsection E of this section, except that each of the four institutions shall be allocated at least one endowed chair.

J. Up to three million dollars (\$3,000,000) of the faculty endowment fund may be disbursed after July 1, 2003 to the commission on higher education to endow and disburse the money for one endowed chair each to the university of New Mexico,

New Mexico state university and the New Mexico institute of mining and technology. Each endowed chair shall be eligible for one million dollars (\$1,000,000) upon notification by the institution that it has received matching funds for the endowment from other than state sources in an amount equal to or greater than five hundred thousand dollars (\$500,000) for establishment of an endowed chair that is directly related to the economic development of the state."

SENATE FINANCE COMMITTEE

SUBSTITUTE FOR SENATE BILL 466

CHAPTER 393

CHAPTER 393, LAWS 2003

AN ACT

RELATING TO HEALTH; AMENDING THE HEALTH SERVICE CORPS ACT TO INCLUDE DENTISTS AND DENTAL HYGIENISTS; AUTHORIZING INCREASED RECRUITMENT OF VARIOUS HEALTH PROFESSIONALS.

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

Section 1. Section 24-1D-2 NMSA 1978 (being Laws 1994, Chapter 63, Section 2) is amended to read:

"24-1D-2. DEFINITIONS.--As used in the Health Service Corps Act:

- A. "corps" means the New Mexico health service corps;
- B. "department" means the department of health;
- C. "health professional" means a physician, physician assistant, nurse practitioner, nurse-midwife, emergency medical technician-paramedic, dentist or dental hygienist;
- D. "physician" means a medical doctor or doctor of osteopathic medicine;
- E. "physician assistant" means a physician assistant or osteopathic physician assistant; and
- F. "practice site" means a public health clinic or public or private nonprofit primary care clinic that is located in a state-designated medically underserved area or

that serves a high-needs population and that uses a sliding fee scale approved by the department."

SENATE BILL 494, AS AMENDED

CHAPTER 394

CHAPTER 394, LAWS 2003

AN ACT

RELATING TO EDUCATION; TRANSFERRING THE AUTHORITY FOR ADULT BASIC EDUCATION TO THE COMMISSION ON HIGHER EDUCATION; DECLARING AN EMERGENCY.

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

Section 1. COMMISSION ON HIGHER EDUCATION--ADDITIONAL DUTIES.--In addition to the duties imposed upon the commission on higher education by the Post-Secondary Educational Planning Act, the commission shall have the responsibility of planning and budgeting functions for the statewide adult basic education program and authority to adopt and promulgate rules for all such adult educational programs. The commission will establish a uniform protocol for identifying, communicating with and providing direct and equitable access to funding for eligible agencies, which include:

- A. local educational agencies;
- B. community-based organizations;
- C. volunteer literacy organizations;
- D. post-secondary institutions;
- E. public or private nonprofit agencies;
- F. public libraries;
- G. public housing authorities; and

H. a consortium of agencies, organizations, institutions, libraries or authorities as described in Section 203 Public Law 105.

Section 2. Section 22-2-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 5, as amended by Laws 2001, Chapter 286, Section 1 and by Laws 2001, Chapter 299, Section 5) 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, including vocational programs that are part of a juvenile construction industries initiative for juveniles who are committed to the custody of the children, youth and families department;

C. appoint a state superintendent;

D. purchase and loan instructional material to students pursuant to the Instructional Material Law and adopt rules 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 licenses to teachers, instructional support providers and school administrators according to law and according to a system of classification adopted and published by the state board;

H. deny, suspend or revoke a license according to law for incompetency, moral turpitude or 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 the New Mexico military institute;

K. adopt rules 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. require a public 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;

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

O. 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;

P. require prior approval for an 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;

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

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

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

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

U. assess and evaluate public schools for accreditation purposes to determine the adequacy of student gain in standard required subject matter, adequacy of student activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

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

W. establish and implement a plan that provides for technical assistance to local school boards through workshops and other in-service training methods;

X. 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;

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

Z. develop a systemic framework for professional development that provides training to ensure quality teachers and school principals and that improves and enhances student achievement. The state board shall work with school employees, the commission on higher education and institutions of higher education to establish the framework. The framework shall include:

(1) the criteria for school districts to apply for professional development funds, including an evaluation component that will be used by the department in approving school district professional development plans; and

(2) guidelines for developing extensive professional development activities for school districts that:

(a) improve teachers' knowledge of the subjects they teach and the ability to teach those subjects to all of their students;

(b) are an integral part of the public school and school district plans for improving student achievement;

(c) provide teachers, school administrators and instructional support providers with the strategies, support, knowledge and skills to help all students meet New Mexico academic standards;

(d) are high quality, sustained, intensive and focused on the classroom; and

(e) are developed and evaluated regularly with extensive participation of school employees and parents;

AA. approve education curricula and programs offered in all two-year public post-secondary educational institutions, except those in Chapter 21, Article 12 NMSA 1978, that lead to alternative licenses for degreed persons pursuant to Section 22-10A-8 NMSA 1978 or licensure for educational assistants; and

BB. withhold program approval from a college of education or teacher preparation program that fails to offer a course on teaching reading that:

(1) is based upon current scientifically based reading research;

(2) aligns with state board-adopted reading standards;

(3) includes strategies and assessment measures to ensure that beginning teachers are proficient in teaching reading; and

(4) was designed after seeking input from experts in the education field."

Section 3. Section 22-8-30.1 NMSA 1978 (being Laws 1995, Chapter 56, Section 1) is amended to read:

"22-8-30.1. ADULT BASIC EDUCATION FUND CREATED.--The "adult basic education fund" is created in the state treasury. Money in the fund is appropriated to the commission on higher education for the purpose of funding adult basic education programs for educationally disadvantaged adults. Money in the fund shall be distributed by the commission pursuant to an equitable formula established by the commission in consultation with representatives from the adult basic education administrative sites. Any unexpended or unencumbered balance remaining in the fund at the end of each fiscal year shall revert to the general fund."

Section 4. Section 22-8-30.2 NMSA 1978 (being Laws 1995, Chapter 56, Section 2) is amended to read:

"22-8-30.2. ADULT BASIC EDUCATION--DISTRIBUTION OF MONEY--OBJECTIVE FORMULA--COMMISSION ON HIGHER EDUCATION--ADOPTION OF FORMULA.--The commission on higher education in consultation with representatives of adult basic education administrative sites shall create an equitable formula for the distribution of money in the adult basic education fund. In establishing an equitable formula, the commission shall consider the types of programs conducted, the cost of

service delivery and the socio-economic profiles of the adult receiving services. The commission shall review the formula and any proposed changes with the adult basic education administrative sites prior to adoption or amendment."

Section 5. 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 commission on higher education is entitled to the free use of instructional material from the instructional material bureau of the department of education.

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 6. TEMPORARY PROVISION--TRANSFER.--All personnel, appropriations, money, records, property, equipment and supplies applied to the administration of the state's adult basic education programs by the state department of public education shall be transferred to the commission on higher education. All contracts and agreements relating to the activities of the personnel and records transferred pursuant to the provisions of this section shall also be transferred.

Section 7. REPEAL.--Section 22-13-11 NMSA 1978 (being Laws 1967, Chapter 16, Section 185) is repealed.

Section 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 691, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 395

CHAPTER 395, LAWS 2003

AN ACT

RELATING TO HEALTH INSURANCE; REVISING BOARD MEMBERSHIP AND ELIGIBILITY CRITERIA FOR THE MEDICAL INSURANCE POOL; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. 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 Medical Insurance Pool Act:

A. "board" means the board of directors of the pool;

B. "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 Medical 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;

C. "federally defined eligible individual" means an individual:

(1) for whom, as of the date on which the individual seeks coverage under the Medical Insurance Pool Act, the aggregate of the periods of creditable coverage is eighteen or more months;

(2) whose most recent prior creditable coverage was under a group health plan, government plan, church plan or health insurance coverage offered in connection with such a plan;

(3) who is not eligible for coverage under a group health plan, Part A or Part B of Title 18 of the Social Security Act or a state plan under Title 19 or Title 21 of the Social Security Act or a successor program and who does not have other health insurance coverage;

(4) with respect to whom the most recent coverage within the period of aggregate creditable coverage was not terminated based on a factor relating to nonpayment of premiums or fraud;

(5) who, if offered the option of continuation of coverage under a continuation provision pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 or a similar state program elected this coverage; and

(6) who has exhausted continuation coverage under this provision or program, if the individual elected the continuation coverage described in Paragraph (5) of this subsection;

D. "health care facility" means any entity providing health care services that is licensed by the department of health;

E. "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;

F. "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; limited benefit insurance; 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 that is required by law to be contained in any liability insurance policy;

G. "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;

H. "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;

I. "insured" means an individual resident of this state who is eligible to receive benefits from any insurer or other health plan;

J. "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;

K. "medicare" means coverage under Part A or Part B of Title 18 of the Social Security Act, as amended;

L. "pool" means the New Mexico medical insurance pool;

M. "preexisting condition" means a physical or mental condition for which medical advice, medication, diagnosis, care or treatment was recommended for or received by an applicant within six months before the effective date of coverage, except that pregnancy is not considered a preexisting condition; and

N. "therapist" means a licensed physical, occupational, speech or respiratory therapist."

Section 2. Section 59A-54-4 NMSA 1978 (being Laws 1987, Chapter 154, Section 4, as amended) is amended to read:

"59A-54-4. POOL CREATED--BOARD.--

A. There is created a nonprofit entity to be known as the "New Mexico medical insurance pool". All insurers shall organize and remain members of the pool as a condition of their authority to transact insurance business in this state. The board is a governmental entity for purposes of the Tort Claims Act.

B. The superintendent shall, within sixty days after the effective date of the Medical Insurance Pool Act, give notice to all insurers of the time and place for the initial organizational meetings of the pool. Each member of the pool shall be entitled to one vote in person or by proxy at the organizational meetings.

C. The pool shall operate subject to the supervision and approval of the board. The board shall consist of the superintendent or his designee, who shall serve as the chairman of the board, four members appointed by the members of the pool and six members appointed by the superintendent. The members appointed by the superintendent shall consist of four citizens who are not professionally affiliated with an insurer, at least two of whom shall be individuals who are insured by the pool, who would qualify for pool coverage if they were not eligible for particular group coverage or who are a parent, guardian, relative or spouse of such an individual. The superintendent's fifth appointment shall be a representative of a statewide health planning agency or organization. The superintendent's sixth appointment shall be a representative of the medical community.

D. The members of the board appointed by the members of the pool shall be appointed for initial terms of four years or less, staggered so that the term of one member shall expire on June 30 of each year. The members of the board appointed by the superintendent shall be appointed for initial terms of five years or less, staggered so that the term of one member expires on June 30 of each year. Following the initial terms, members of the board shall be appointed for terms of three years. If the members of the pool fail to make the initial appointments required by this subsection within sixty days following the first organizational meeting, the superintendent shall make those appointments. Whenever a vacancy on the board occurs, the superintendent shall fill the vacancy by appointing a person to serve the balance of the unexpired term. The person appointed shall meet the requirements for initial appointment to that position. Members of the board may be reimbursed from the pool subject to the limitations provided by the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. The board shall submit a plan of operation to the superintendent and any amendments to it necessary or suitable to assure the fair, reasonable and equitable administration of the pool.

F. The superintendent shall, after notice and hearing, approve the plan of operation, provided it is determined to assure the fair, reasonable and equitable administration of the pool and provides for the sharing of pool losses on an equitable, proportionate basis among the members of the pool. The plan of operation shall become effective upon approval in writing by the superintendent consistent with the date on which coverage under the Medical Insurance Pool Act is made available. If the board fails to submit a plan of operation within one hundred eighty days after the appointment of the board, or any time thereafter fails to submit necessary amendments to the plan of operation, the superintendent shall, after notice and hearing, adopt and promulgate such rules as are necessary or advisable to effectuate the provisions of the Medical Insurance Pool Act. Rules promulgated 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.

G. Any reference in law, rule, division bulletin, contract or other legal document to the New Mexico comprehensive health insurance pool shall be deemed to refer to the New Mexico medical insurance pool."

Section 3. Section 59A-54-10 NMSA 1978 (being Laws 1987, Chapter 154, Section 10, as amended) is amended to read:

"59A-54-10. ASSESSMENTS.--

A. Following the close of each fiscal year, the pool administrator shall determine the net premium, being premiums less administrative expense allowances, the pool expenses and claim expense losses for the year, taking into account investment income and other appropriate gains and losses. The assessment for each insurer shall be determined by multiplying the total cost of pool operation by a fraction the numerator of which equals that insurer's premium and subscriber contract charges or their equivalent for health insurance written in the state during the preceding calendar year and the denominator of which equals the total of all premiums and subscriber contract charges written in the state; provided that premium income shall include receipts of medicaid managed care premiums but shall not include any payments by the secretary of health and human services pursuant to a contract issued under Section 1876 of the Social Security Act, as amended. The board may adopt other or additional methods of adjusting the formula to achieve equity of assessments among pool members, including assessment of health insurers and reinsurers based upon the number of persons they cover through primary, excess and stop-loss insurance in the state.

B. If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest and used by the board to offset future

losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims.

C. The proportion of participation of each member in the pool shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed with it by the member. Any deficit incurred by the pool shall be recouped by assessments apportioned among the members of the pool pursuant to the assessment formula provided by Subsection A of this section; provided that the assessment for any pool member shall be allowed as a thirty-percent credit on the premium tax return for that member.

D. The board may abate or defer, in whole or in part, the assessment of a member of the pool if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligation. In the event an assessment against a member of the pool 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 pool for the deficiency for four years."

Section 4. 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 currently paying a rate for a health plan that is higher than one hundred twenty-five percent of the pool's standard rate;

(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;

(5) has a medical condition that is listed on the pool's pre-qualifying conditions;

(6) 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 P, N and D, respectively, of Section 59A-23E-2 NMSA 1978, 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; or

(7) is entitled to continuation coverage pursuant to Section 59A-23E-19 NMSA 1978.

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

(1) a person's eligibility for a policy issued under the Health Insurance Alliance Act shall not preclude a person from remaining on or purchasing a pool policy; provided that 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;

(2) a pool policyholder shall be eligible for renewal of pool coverage even though the policyholder became eligible for medicare or medicaid coverage while covered under a pool policy; and

(3) if a pool policyholder becomes eligible for any group health plan, the policyholder's pool coverage shall not be involuntarily terminated until any preexisting condition period imposed on the policyholder by the plan has been exhausted.

C. Coverage under a pool policy is in excess of and shall not duplicate coverage under any other form of health insurance.

D. A policyholder's newborn child or newly adopted child is automatically eligible for thirty-one consecutive calendar days of coverage for an additional premium.

E. Except for a person eligible as provided in Paragraph (6) 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 preexisting conditions.

F. 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 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.

G. An individual is not eligible for coverage by the pool if:

(1) except as provided in Subsection I of this section, the individual is, at the time of application, eligible for medicare or medicaid that would provide coverage for amounts in excess of limited policies such as dread disease, cancer policies or hospital indemnity policies;

(2) the individual has voluntarily terminated coverage by the pool within the past twelve months and did not have other continuous coverage during that time, except that this paragraph shall not apply to an applicant who is a federally defined eligible individual;

(3) the individual is an inmate of a public institution or is eligible for public programs for which medical care is provided;

(4) the individual is eligible for coverage under a group health plan;

(5) the individual has health insurance coverage as defined in Subsection R of Section 59A-23E-2 NMSA 1978;

(6) the most recent coverages within the coverage period described in Paragraph (6) of Subsection A of this section were terminated as a result of nonpayment of premium or fraud; or

(7) the individual has been offered the option of continuation coverage under a federal COBRA continuation provision as defined in Subsection F of Section 59A-23E-2 NMSA 1978 or under a similar state program and he has elected the coverage and did not exhaust the continuation coverage under the provision or program.

H. 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.

I. The board may issue a pool policy for individuals who:

(1) are enrolled in both Part A and Part B of medicare because of a disability; and

(2) except for the eligibility for medicare, would otherwise be eligible for coverage pursuant to the criteria of this section."

SENATE BILL 778, AS AMENDED

CHAPTER 396

CHAPTER 396, LAWS 2003

AN ACT

RELATING TO PRESCRIPTION DRUGS; ALLOWING THE MEDICAL INSURANCE POOL TO CREATE A PRESCRIPTION DRUG PROGRAM.

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

Section 1. A new section of the Medical Insurance Pool Act is enacted to read:

"PRESCRIPTION DRUG PROGRAM--COST-SHARING.--

A. The board may establish a prescription drug program, in whole or in part, including a pilot or phase-in program, to offer selected eligible persons the ability to purchase prescription drugs. The board may establish varying levels of eligibility and cost-sharing criteria as needed for selected eligible persons and, if established, shall ensure that cost-containment mechanisms are included in the program.

B. The board may establish the cost-sharing amounts payable by a person enrolled in the prescription drug program, including the premium, deductible, coinsurance, co-payment and other out-of-pocket expenses.

C. If the board establishes a prescription drug program, the board shall establish the assessments pursuant to Section 59A-54-10 NMSA 1978.

D. If the board establishes a prescription drug program, the assessment for a pool member shall be determined in the same manner as provided in this section provided that a pool member shall be allowed a fifty percent credit for the prescription drug program assessment on the premium tax return for that member.

E. The board may issue a pool prescription drug program benefit policy for a person who is over the age of sixty-five and unable to purchase or is ineligible for a similar prescription drug program. The board may issue a pool prescription drug

program benefit policy for a person who is eligible for a state-funded or state-operated low-income pharmacy benefit program.

F. If the board establishes a prescription drug program, the board shall cooperate with other state and federal prescription drug initiatives."

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE

FOR SENATE BILL 754, AS AMENDED

CHAPTER 397

CHAPTER 397, LAWS 2003

AN ACT

RELATING TO HEALTH INSURANCE; REQUIRING SIXTY DAYS' NOTICE ON PREMIUM INCREASES.

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

Section 1. Section 59A-18-13 NMSA 1978 (being Laws 1984, Chapter 127, Section 343, as amended) is amended to read:

"59A-18-13. APPROVAL OR DISAPPROVAL OF HEALTH INSURANCE FORMS.--

A. With policy, endorsement, rider and application forms and classification of risks filed by the insurer with the superintendent under Section 59A-18-12 NMSA 1978 as to health insurance, the insurer shall also file with the superintendent its premium rates applicable to such health insurance forms. An insurer shall not use any such form or premium that has not been approved by the superintendent or that is not in effect in accordance with Section 59A-18-14 NMSA 1978.

B. An increase in a health insurance premium shall not be effective without sixty days' written notice to the policyholder."

SENATE BILL 588

CHAPTER 398

CHAPTER 398, LAWS 2003

AN ACT

RELATING TO TAXATION; ENACTING THE NEW MEXICO TAXPAYER BILL OF RIGHTS; PROVIDING THAT TAXPAYERS MAY BE AWARDED COSTS AND FEES IN CERTAIN INSTANCES; PROHIBITING PENALTY ASSESSMENTS IN CERTAIN CASES; AMENDING AND ENACTING SECTIONS OF THE TAX ADMINISTRATION ACT.

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

Section 1. A new section of the Tax Administration Act is enacted to read:

"NEW MEXICO TAXPAYER BILL OF RIGHTS CREATED--PURPOSE.--The "New Mexico Taxpayer Bill of Rights" is created. It is the purpose of the New Mexico Taxpayer Bill of Rights to:

- A. ensure that the rights of New Mexico taxpayers are adequately safeguarded and protected during the assessment, collection and enforcement of any tax administered by the department pursuant to the Tax Administration Act;
- B. ensure that the taxpayer is treated with dignity and respect; and
- C. provide brief but comprehensive statements that explain in simple, nontechnical terms the rights of taxpayers as set forth in Section 2 of this 2003 act."

Section 2. A new section of the Tax Administration Act is enacted to read:

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

- A. the right to available public information and prompt and courteous tax assistance;
- B. the right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the department in accordance with the provisions of Section 7-1-24 NMSA 1978;
- C. the right to have audits, inspections of records and meetings conducted at a reasonable time and place in accordance with the provisions of Section 7-1-11 NMSA 1978;

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

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

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

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

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

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

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

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

Section 3. A new section of the Tax Administration Act is enacted to read:

"NEW MEXICO TAXPAYER BILL OF RIGHTS--NOTICE TO THE PUBLIC.--The department shall develop a publication that states the rights of taxpayers in simple, nontechnical terms and shall disseminate the publication to taxpayers, at a minimum, with the annual income and semiannual combined reporting system tax forms."

Section 4. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended by Laws 2001, Chapter 16, Section 2 and also by Laws 2001, Chapter 56, Section 2) is amended to read:

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

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

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

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

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

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

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

J. "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;

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

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

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

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

O. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate, other association or gas, water or electric utility owned or operated by a county or municipality; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; and "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

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

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

R. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4 NMSA 1978 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;

S. "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;

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

U. "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;

V. "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;

W. "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

X. "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 5. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for any employee of the department or any former employee of the department to reveal to any individual other than another employee of the department any

information contained in the return of any taxpayer made pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about any taxpayer acquired as a result of his employment by the department and not available from public sources, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section to which the representative is subject;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information;

C. to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states that have met the requirements of Subsection A of this section;

D. to a district court or an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes to which the state is a party and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in any action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put his own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

E. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection D of this section;

F. information obtained through the administration of any law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of that information is not otherwise prohibited by law;

G. in such manner, for statistical purposes, that the information revealed is not identified as applicable to any individual taxpayer;

H. with reference to any information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-13 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

I. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of any unpaid assessment of tax for which his transferor, assignor, seller or lessee is liable;

J. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of any unpaid assessment of tax for which the purchaser's seller is liable;

K. to a municipality of this state upon its request for any period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on any list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the municipality in question or the department;

L. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

M. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel

shall use such information only for the purpose of enforcing the support liability of the absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

N. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the amount and gallonage of gasoline and ethanol blended fuels imported, exported, sold and used, including tax-exempt sales to the federal government reported or upon which the gasoline tax was paid and covering taxes received from each distributor in the state of New Mexico;

O. the identity of distributors and gallonage reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to any distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

P. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

Q. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

R. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Any information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalty contained in Section 7-1-76 NMSA 1978;

S. to a county of this state that has in effect any local option gross receipts tax imposed by the county upon its request for any period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on any list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of any incorporated municipalities, information indicating whether persons shown on any list of businesses located in the area of that county outside of any incorporated municipalities within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for the area of that county outside of any incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or any local option gross receipts tax imposed by the county only on persons engaging in business in that area of the county outside of any incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than other officers or employees of the county in question or the department;

T. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

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

(1) information for or relating to any period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

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

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

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the release of any proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

V. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

W. to the public regulation commission, information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

X. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by race tracks;

Y. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use that information only for the purpose of enforcing the educational debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose;

Z. any decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

AA. information required by any provision of the Tax Administration Act to be made available to the public by the department;

BB. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person certified to the department by the court as being a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

CC. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person certified to the department by the court as being a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

DD. to the national tax administration agencies of Mexico and Canada, provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute similar to this section;

EE. to a district attorney, a state district court grand jury or federal grand jury with respect to any investigation of or proceeding related to an alleged criminal violation of the tax laws;

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

GG. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to Section 7-1-24 NMSA 1978, provided that the name and identification number of the taxpayer requesting the ruling shall not be provided."

Section 6. Section 7-1-11.1 NMSA 1978 (being Laws 2001, Chapter 16, Section 1) is amended to read:

"7-1-11.1. MANAGED AUDITS.--

A. A managed audit may be limited in scope to certain periods, activities, lines of business, geographic areas or transactions, including tax on:

- (1) the receipts from certain sales;
- (2) the value of certain assets;
- (3) the value of certain expense items or services used; and

(4) any other category specified in an agreement authorized by this section.

B. Upon the application of the taxpayer, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer for a managed audit. To be effective the written agreement must:

(1) be signed by the taxpayer or the taxpayer's authorized representative and by the secretary or the secretary's delegate;

(2) contain a declaration by the taxpayer or the taxpayer's authorized representative that all statements of fact made by the taxpayer or the taxpayer's representative in the taxpayer's application and the agreement are true and correct as to every material matter;

(3) specify the reporting period or periods, the type of receipts or transactions and tax to be audited, the procedures to be followed in performing the managed audit, the records to be used, the date of commencement of the audit for purposes of Section 7-9-43 NMSA 1978 and the date for the taxpayer's presentation of the results of the managed audit to the department; and

(4) include a waiver by the taxpayer of the limitations on assessments for the reporting period or periods to be audited.

C. The agreement for a managed audit may be modified in writing, provided that the modification meets the requirements of Subsection B of this section.

D. In determining whether to enter into an agreement for a managed audit the secretary or the secretary's delegate may consider, in addition to other relevant factors:

(1) the taxpayer's history of tax compliance;

(2) the amount of time and resources the taxpayer has available to dedicate to the audit;

(3) the extent and availability of the taxpayer's records; and

(4) the taxpayer's ability to pay any expected liability.

E. The decision whether to enter into an agreement for a managed audit rests solely with the secretary or the secretary's delegate.

F. The results of the managed audit shall be presented to the department by the taxpayer on or before any date set for presentation of the results in the managed audit agreement. The department shall assess the tax liability found to be due as the

result of a managed audit performed in accordance with a managed audit agreement. The department may review records, documents, schedules or other information to determine if the managed audit substantially conforms to the managed audit agreement."

Section 7. A new section of the Tax Administration Act, Section 7-1-11.2 NMSA 1978, is enacted to read:

"7-1-11.2. REQUIRED AUDIT NOTICES.--

A. Except as provided in Subsection G of this section, prior to or coincident with requesting records and books of account from a taxpayer pursuant to Section 7-1-11 NMSA 1978, as part of an office or field audit, the department shall provide the taxpayer with written dated notice of the commencement of an audit. The notice shall, at a minimum, state the tax programs and reporting periods to be covered and the date on which the audit is commenced.

B. To any taxpayer to whom the department is required to provide a written notice of the commencement of an audit, the department shall also provide a written notice of the outstanding records or books of account that have been requested but not received. If the taxpayer has provided all records and books of account requested, the notice shall so state. The notice of outstanding records or books of account shall be given no sooner than sixty days and no later than one hundred eighty days after the date of the commencement of the audit. The notice of outstanding records or books of account shall be dated and shall provide reasonable descriptions of any records or books of account needed or the information expected to be contained in them and shall give the taxpayer ninety days to comply with Section 7-1-11 NMSA 1978. The notice shall state that if the taxpayer does not properly comply within ninety days of the date of the notice, the department will proceed to issue any assessment of tax due on the basis of information available.

C. A taxpayer may request additional time to comply with the notice of outstanding records and books of account. Such request shall be in writing and shall state the amount of time needed.

D. If the department does not issue an assessment within one hundred eighty days after giving a notice of outstanding records or books of account or within ninety days after the expiration of the additional time requested by the taxpayer to comply, if such request was granted, interest shall be computed in accordance with Paragraph (6) of Subsection A of Section 7-1-67 NMSA 1978.

E. Any taxpayer who was not provided a proper notice of outstanding records or books of account is entitled to computation of interest in accordance with Paragraph (7) of Subsection A of Section 7-1-67 NMSA 1978.

F. Nothing in this section shall prevent the department from requesting from the taxpayer a waiver of the statute of limitations for assessment of tax owed. Nothing in this section shall prevent the department from issuing an assessment of tax owed on the basis of the information available.

G. This section does not apply to investigations of fraud."

Section 8. Section 7-1-24 NMSA 1978 (being Laws 1965, Chapter 248, Section 26, as amended) is amended to read:

"7-1-24. ADMINISTRATIVE HEARING--PROCEDURE.--

A. Any taxpayer may dispute the assessment to the taxpayer of any amount of tax, the application to the taxpayer of any provision of the Tax Administration Act or the denial of or failure to either allow or deny a claim for refund made in accordance with Section 7-1-26 NMSA 1978 by filing with the secretary a written protest against the assessment or against the application to the taxpayer of the provision or against the denial of or the failure to allow or deny the amount claimed to have been erroneously paid as tax. Every protest shall identify the taxpayer and the tax involved and state the grounds for the taxpayer's protest and the affirmative relief requested. The statement of grounds for protest shall specify individual grounds upon which the protest is based and a summary statement of the evidence expected to be produced supporting each ground asserted, if any; provided that the taxpayer may supplement the statement at any time prior to ten days before any hearing conducted on the protest pursuant to Subsection D of this section or, if a scheduling order has been issued, in accordance with the scheduling order. The secretary may, in appropriate cases, provide for an informal conference before setting a hearing of the protest or acting on any claim for refund.

B. Any protest by a taxpayer shall be filed within thirty days of the date of the mailing to the taxpayer by the department of the notice of assessment or mailing to, or service upon, the taxpayer of other peremptory notice or demand, or the date of mailing or filing a return. Upon written request of the taxpayer made within the time permitted for filing a protest, the secretary may grant an extension of time, not to exceed sixty days, within which to file the protest. If a protest is not filed within the time required for filing a protest or, if an extension has been granted, within the extended time, the secretary may proceed to enforce collection of any tax if the taxpayer is delinquent within the meaning of Section 7-1-16 NMSA 1978. Upon written request of the taxpayer made after the time for filing a protest but not more than sixty days after the expiration of the time for filing a protest, the secretary may grant a retroactive extension of time, not to exceed sixty days, within which to file the protest; provided that the taxpayer demonstrates to the secretary's satisfaction that the taxpayer was not able to file a protest or to request an extension within the time to file the protest and that the grounds for the protest have substantial merit. The fact that the department did not mail the assessment or other peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be

deemed to demonstrate the taxpayer's inability to protest or request an extension within the time for filing a protest within the required time. The secretary shall not grant a retroactive extension if a levy has already been served under Section 7-1-31 or 7-1-33 NMSA 1978 or a jeopardy assessment has been made under Section 7-1-59 NMSA 1978. No proceedings other than those to enforce collection of any amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a protest under this section.

C. Claims for refund shall be filed as provided for in Section 7-1-26 NMSA 1978.

D. Upon timely receipt of a protest, the department or hearing officer shall promptly set a date for hearing and on that date hear the protest or claim.

E. A hearing officer shall be designated by the secretary to conduct the hearing. Taxpayers may appear at a hearing for themselves or be represented by a bona fide employee, an attorney, a certified public accountant or a registered public accountant. Hearings shall not be open to the public except upon request of the taxpayer and may be postponed or continued at the discretion of the hearing officer.

F. A hearing officer shall not engage or participate in any way as an employee of the department in the areas of enforcement or formulating general tax policy other than to conduct hearings. A taxpayer may request that the secretary determine whether a hearing officer has engaged or participated in tax policy or enforcement in a way that might reasonably be expected to affect the hearing officer's impartiality in a particular matter. The secretary may designate another hearing officer for the matter to avoid actual or apparent prejudice.

G. A hearing officer shall not engage in ex-parte communications concerning the substantive issues of any matter that has been protested while that matter is still pending. If the secretary finds that a hearing officer has engaged in prohibited ex-parte communications, the secretary shall designate another hearing officer for that matter.

H. In hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt. A taxpayer may request a written ruling on any contested question of evidence in a matter in which the taxpayer has filed a written protest and that protest is pending.

I. In hearings before the hearing officer, the Rules of Civil Procedure for the District Courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require

written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted. A taxpayer may request a written ruling on any contested question of procedure in a matter in which the taxpayer has filed a written protest and that protest is pending.

J. In the case of the hearing of any protest, the hearing officer shall make and preserve a complete record of the proceedings. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. The hearing officer, within thirty days of the hearing, shall inform the protestant in writing of the decision, informing the protestant at the same time of the right to, and the requirements for perfection of, an appeal from the decision to the court of appeals and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting such part thereof as seems appropriate.

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

L. Nothing in this section shall be construed to authorize any criminal proceedings hereunder or to authorize an administrative protest of the issuance of a subpoena or summons."

Section 9. 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 D, E and F of this section, a written claim for refund. Except as provided in Subsection J 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. As used in this subsection, "basis for the refund" means a brief statement of the facts and the law on which the claim is based.

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

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

(2) If the department has neither granted nor denied any portion of a claim for refund within one hundred twenty days of the date the claim was mailed or delivered to the department, the person may 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 Subsection C of this section. After the expiration of the two hundred ten days from the date the claim was mailed or delivered to the department, the department may not approve or disapprove the claim unless the person has pursued one of the remedies under Subsection C of this section.

C. A person may elect to pursue 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 or portion thereof, 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.

D. Except as otherwise provided in Subsections E and F 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) when an amount of a claim for credit under the provisions of the Investment Credit Act, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs Tax Credit Act, Capital Equipment Tax Credit Act or similar act or for the rural job tax credit pursuant to Sections 7-2E-1 and 7-2E-2 NMSA 1978 or similar credit has been denied, the taxpayer may claim a refund of the credit no later than one year after the date of the denial;

(3) when a taxpayer under audit by the department has signed a waiver of the limitation on assessments on or after July 1, 1993 pursuant to Subsection F of Section 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of the same tax paid for the same period for which the waiver was given, until a date one year after the later of the date of the mailing of an assessment issued pursuant to the audit, the date of the mailing of final audit findings to the taxpayer or the date a proceeding is begun in court by the department with respect to the same tax and the same period;

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

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

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

F. If, as a result of an audit by the 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 D 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.

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

H. 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.

I. 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.

J. 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 10. A new section of the Tax Administration Act is enacted to read:

"CREDIT CLAIMS.--Any taxpayer who requests approval of a statutory tax credit is deemed to have received such approval if the request has not been granted or denied within one hundred eighty days of the date it was filed. Nothing in this section shall be

construed to prevent the department from auditing taxes paid or from assessing taxes owed, including any tax resulting from tax credits found not to be valid."

Section 11. Section 7-1-29 NMSA 1978 (being Laws 1965, Chapter 248, Section 31, as amended) is amended to read:

"7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

A. In response to a claim for refund made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize the refund to a person of the amount of any overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A refund of tax and interest erroneously paid and amounting to more than ten thousand dollars (\$10,000) may be made to a person only with the prior approval of the attorney general, except that:

(1) refunds with respect 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, refunds of gasoline tax made under Section 7-13-17 NMSA 1978 and refunds of cigarette tax made under the Cigarette Tax Act may be made without the prior approval of the attorney general regardless of the amount; and

(2) refunds with respect to the Corporate Income and Franchise Tax Act amounting to less than twenty thousand dollars (\$20,000) may be made without the prior approval of the attorney general.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or any federal court, from which order, appeal or review is not successfully taken, adjudging that a person has made an overpayment of tax, the secretary shall authorize the refund to the person of the amount thereof.

C. In the discretion of the secretary, any amount of tax due to be refunded may be offset against any amount of tax for the payment of which the person due to receive the refund is liable. The secretary or the secretary's delegate shall give notice to the taxpayer that the refund will be made in this manner, and the taxpayer shall be entitled to interest under Section 7-1-68 NMSA 1978 until the tax liability is credited with the refund amount.

D. In an audit by the department or a managed audit covering multiple reporting periods where both underpayments and overpayments of a tax are found to have been made in different reporting periods, the department shall credit the tax overpayments found against the underpayments, provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first

to the earliest underpayment found and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period in which the overpayment was credited against an underpayment, whichever is later. If the overpayments credited pursuant to this section exceed the underpayments found for a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. Records of refunds made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund."

Section 12. A new section of the Tax Administration Act, Section 7-1-29.1 NMSA 1978, is enacted to read:

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

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

B. As used in this section:

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

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

(3) "reasonable administrative costs" means:

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

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

(4) "reasonable litigation costs" means:

(a) reasonable court costs; and

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

C. For purposes of this section:

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

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

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

(2) the taxpayer shall not be treated as the prevailing party if the department establishes that the position of the department in the proceeding was based upon a reasonable application of the law to the facts of the case. For purposes of this paragraph, the position of the department shall be presumed not to be based upon a reasonable application of the law to the facts of the case if:

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

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

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

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

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

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

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

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

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

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

Section 13. Section 7-1-67 NMSA 1978 (being Laws 1965, Chapter 248, Section 68, as amended) is amended to read:

"7-1-67. INTEREST ON DEFICIENCIES.--

A. If a tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on that amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid, except that:

(1) for income tax imposed on a member of the armed services of the United States serving in a combat zone under orders of the president of the United States, interest shall accrue only for the period beginning the day after any applicable extended due date if the tax is not paid;

(2) if the amount of interest due at the time payment is made is less than one dollar (\$1.00), then no interest shall be due;

(3) if demand is made for payment of a tax, including accrued interest, and if the tax is paid within ten days after the date of the demand, no interest on the amount paid shall be imposed for the period after the date of the demand;

(4) if a managed audit is completed by the taxpayer on or before the date required, as provided in the agreement for the managed audit, and payment of

any tax found to be due is made in full within thirty days of the date the secretary has mailed or delivered an assessment for the tax to the taxpayer, no interest shall be due on the assessed tax;

(5) when, as the result of an audit or a managed audit, an overpayment of a tax is credited against an underpayment of tax pursuant to Section 7-1-29 NMSA 1978, interest shall accrue from the date the tax was due until the tax is deemed paid;

(6) if the department does not issue an assessment for the tax program and period within the time provided in Subsection D of Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between either:

(a) the one hundred eightieth day after giving a notice of outstanding records or books of account and the date of the assessment of the tax; or

(b) the ninetieth day after the expiration of the additional time requested by the taxpayer to comply, if such request was granted, and the date of the assessment of the tax; and

(7) if the taxpayer was not provided with proper notices as required in Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between one hundred eighty days prior to the date of assessment and the date of assessment.

B. Interest due to the state under Subsection A or D of this section shall be at the rate of fifteen percent a year, computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall be applied to amounts due under the compact or other agreement.

C. Nothing in this section shall be construed to impose interest on interest or interest on the amount of any penalty.

D. If any tax required to be paid in accordance with Section 7-1-13.1 NMSA 1978 is not paid in the manner required by that section, interest shall be paid to the state on the amount required to be paid in accordance with Section 7-1-13.1 NMSA 1978. If interest is due under this subsection and is also due under Subsection A of this section, interest shall be due and collected only pursuant to Subsection A of this section."

Section 14. 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 C of this section, in the case of failure due to negligence or disregard of department rules and regulations, but without intent to evade or defeat a tax, to pay when due the 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 a tax is due, there shall be added to the amount assessed a penalty in an amount equal to 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. No penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law made in good faith and on reasonable grounds.

C. 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.

D. In the case of failure, with willful intent to evade or defeat a tax, to pay when due the 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.

E. If demand is made for payment of a tax, including penalty imposed pursuant to this section, and if the 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.

F. If a taxpayer makes electronic payment of a tax but the payment does not include all of the information required by the department pursuant to the provisions of Section 7-1-13.1 NMSA 1978 and if the department does not receive the required information within five business days from the later of the date a request by the department for that information is received by the taxpayer or the due date, the taxpayer shall be subject to a penalty of two percent per month or any fraction of a month from the fifth day following the date the request is received. If a penalty is imposed under

Subsection A of this section with respect to the same transaction for the same period, no penalty shall be imposed under this subsection.

G. No penalty shall be imposed on:

(1) tax due in excess of tax paid in accordance with an approved estimated basis pursuant to Section 7-1-10 NMSA 1978;

(2) tax due as the result of a managed audit; or

(3) tax that is deemed paid by crediting overpayments found in an audit or managed audit of multiple periods pursuant to Section 7-1-29 NMSA 1978."

Section 15. A new section of the Tax Administration Act is enacted to read:

"TAX LIABILITY--SPOUSE OR FORMER SPOUSE.--

A. If the secretary determines that, taking into account all the facts and circumstances, it is inequitable to hold the spouse or former spouse of a taxpayer liable for payment of all or part of any unpaid tax, assessment or other deficiency for a tax administered under the Tax Administration Act, the secretary may decline to bring an action or proceeding to collect such taxes against the spouse or former spouse of the taxpayer.

B. Nothing in Subsection A of this section shall be construed to authorize the abatement of taxes or enforcement of any provisions of the Tax Administration Act against the taxpayer.

C. The secretary shall adopt and promulgate regulations as necessary for making the determinations pursuant to this section."

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 64

CHAPTER 399

CHAPTER 399, LAWS 2003

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; CLARIFYING THE POWERS AND STATUS OF THE SMALL BUSINESS INVESTMENT CORPORATION; CLARIFYING THE CRITERIA REQUIRED OF INVESTMENTS; DECLARING AN EMERGENCY.

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

Section 1. Section 6-10-10.1 NMSA 1978 (being Laws 1988, Chapter 61, Section 2, as amended) is amended to read:

"6-10-10.1. SHORT-TERM INVESTMENT FUND CREATED--DISTRIBUTION OF EARNINGS--REPORT OF INVESTMENTS.--

A. There is created in the state treasury the "short-term investment fund". The fund shall consist of all deposits from governmental entities and Indian tribes or pueblos that are placed in the custody of the state treasurer for short-term investment purposes pursuant to this section. The state treasurer shall maintain a separate account for each governmental entity and Indian tribe or pueblo having deposits in the fund.

B. If a local public body is unable to receive payment on public money at the rate of interest as set forth in Section 6-10-36 NMSA 1978 from financial institutions within the geographic boundaries of the governmental unit, then a local public finance official having money of that local public body in his custody not required for current expenditure may, with the consent of the appropriate local board of finance, if any, remit some or all of such money to the state treasurer for deposit for the purpose of short-term investment as allowed by this section.

C. Before local funds are invested or reinvested for the purpose of short-term investment pursuant to this section, the local public body finance official shall notify and make such funds available to banks, savings and loan associations and credit unions located within the geographical boundaries of their respective governmental unit, subject to the limitation on credit union accounts. To be eligible for such funds, the financial institution shall pay to the local public body the rate established by the state treasurer pursuant to a policy adopted by the state board of finance for such short-term investments.

D. The local public body finance official shall specify the length of time a deposit shall be in the short-term investment fund, but in any event the deposit shall not be made for more than one hundred eighty-one days. The state treasurer through the use of the state fiscal agent shall separately track each such deposit and shall make such information available to the public upon written request.

E. The state treasurer shall invest the short-term investment fund as provided for state funds under Section 6-10-10 NMSA 1978 in investments with a maturity at the time of purchase that does not exceed three hundred ninety-seven days.

The state treasurer may elect to have the short-term investment fund consolidated for investment purposes with the state funds under the control of the state treasurer; provided that accurate and detailed accounting records are maintained for the account of each participating entity and Indian tribe or pueblo and that a proportionate amount of interest earned is credited to each of the separate government accounts. The fund shall be invested to achieve its objective, which is to realize the maximum return consistent with safe and prudent management.

F. At the end of each month, all net investment income or losses from investment of the short-term investment fund shall be distributed by the state treasurer to the contributing entities and Indian tribes or pueblos in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the amounts in the fund were invested. The state treasurer shall charge participating entities, Indian tribes and pueblos reasonable audit, administrative and investment expenses to be paid directly from their net investment income for the investment and administrative services provided pursuant to this section.

G. As used in this section, "local public body" means a political subdivision of the state, including school districts and post-secondary educational institutions.

H. In addition to the deposit of funds of local public bodies, the state treasurer may also accept for deposit, deposit and account for, in the same manner as funds of local public bodies, funds of the following governmental entities if the governing authority of the entity approves by resolution the deposit of the funds for the short-term investment:

(1) the agricultural commodity commission established under the Agricultural Commodity Commission Act;

(2) the Albuquerque metropolitan arroyo flood control authority established under the Arroyo Flood Control Act;

(3) the business improvement district management committee established under the Business Improvement District Act;

(4) the New Mexico community development council established under the New Mexico Community Assistance Act;

(5) the governing authority of only special districts authorized under Chapter 73 NMSA 1978;

(6) the board of trustees established under the Economic Advancement District Act;

(7) the board of directors of a corporation or foundation established under the Educational Assistance Act;

(8) a board of directors established under the Flood Control District Act;

(9) the New Mexico hospital equipment loan council established under the Hospital Equipment Loan Act;

(10) the authority established under the Industrial and Agricultural Finance Authority Act;

(11) the authority established under the Las Cruces Arroyo Flood Control Act;

(12) the authority established under the Mortgage Finance Authority Act;

(13) the authority established under the Municipal Mortgage Finance Act;

(14) the authority established under the Public School Insurance Authority Act;

(15) the authority established under the Southern Sandoval County Arroyo Flood Control Act;

(16) a board of trustees established under the Special Hospital District Act;

(17) the authority established under the New Mexico Finance Authority Act; and

(18) the corporation established under the Small Business Investment Act.

I. In addition to the deposit of funds of local public bodies, the state treasurer may also accept for deposit and deposit and account for, in the same manner as funds of local public bodies, funds of any Indian tribe or pueblo in the state if authorized to do so under a joint powers agreement executed by the state treasurer and the governing authority of the Indian tribe or pueblo under the provisions of the Joint Powers Agreements Act."

Section 2. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended by Laws 2001, Chapter 238, Section 1 and also by Laws 2001, Chapter 252, Section 10) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND SMALL BUSINESS INVESTMENTS.--

A. No more than three percent of the market value of the severance tax permanent fund may be invested in New Mexico private equity funds under this section.

B. If an investment is made under Subsection A of this section, not more than fifteen million dollars (\$15,000,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one New Mexico private equity fund. The amount invested in any one New Mexico private equity fund shall not exceed fifty percent of the committed capital of that fund.

C. In making investments pursuant to Subsection A of this section, the council shall give consideration to investments in New Mexico private equity funds whose investments enhance the economic development objectives of the state.

D. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council and upon review of the recommendation of the private equity investment advisory committee. The state investment officer is authorized to make investments pursuant to Subsection A of this section contingent upon a New Mexico private equity 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 that accredited investors have obligated for investment in a New Mexico private equity fund and which fixed amounts may be invested in that fund on one or more payments over time; and

(2) "New Mexico private equity fund" means a 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 or debt of businesses for the purpose of providing capital for start-up, expansion, product or market development, recapitalization or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments;

(c) has a minimum committed capital of fifteen million dollars (\$15,000,000);

(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 USCA Section 77(b)) and rules and regulations promulgated pursuant to that section.

F. The state investment officer shall make a commitment to the small business investment corporation pursuant to the Small Business Investment Act to invest one-fourth percent of the market value of the severance tax permanent fund by July 1, 2001 to create new job opportunities by providing capital for land, buildings or infrastructure for facilities to support new or expanding businesses and to otherwise make investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico. On July 1, 2003 and on each July 1 thereafter, the state investment officer shall determine whether the invested capital in the small business investment corporation is less than one-fourth percent of the market value of the severance tax permanent fund. If the invested capital in the small business investment corporation is less than one-fourth percent of the market value of the severance tax permanent fund, further commitments shall be made until the invested capital is equal to one-fourth percent of the market value of the fund.

G. The state investment officer shall report semiannually on the New Mexico private equity investments made pursuant to this section. Annually, a report shall be submitted to the legislature prior to the beginning of each regular legislative session and a second report no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committee. Each report shall provide the amounts invested in each New Mexico private equity fund, as well as information about the objectives of the funds, the companies in which each fund is invested and how each investment enhances the economic development objectives of the state."

Section 3. Section 41-4-3 NMSA 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is amended to read:

"41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

A. "board" means the risk management advisory board;

B. "governmental entity" means the state or any local public body as defined in Subsections C and H of this section;

C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions and all water and natural gas associations organized pursuant to Chapter 3, Article 28 NMSA 1978;

D. "law enforcement officer" means a full-time salaried public employee of a governmental entity whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes, or members of the national guard when called to active duty by the governor;

E. "maintenance" does not include:

(1) conduct involved in the issuance of a permit, driver's license or other official authorization to use the roads or highways of the state in a particular manner; or

(2) an activity or event relating to a public building or public housing project that was not foreseeable;

F. "public employee" means an officer, employee or servant of a governmental entity, excluding independent contractors except for individuals defined in Paragraphs (7), (8), (10) and (14) of this subsection, or of a corporation organized pursuant to the Educational Assistance Act, the Small Business Investment Act or the Mortgage Finance Authority Act and including:

(1) elected or appointed officials;

(2) law enforcement officers;

(3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;

(5) members of state or local selection panels established pursuant to the Adult Community Corrections Act;

(6) members of state or local selection panels established pursuant to the Juvenile Community Corrections Act;

(7) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;

(8) members of the board of directors of the New Mexico medical insurance pool;

(9) individuals who are members of medical review boards, committees or panels established by the educational retirement board or the retirement board of the public employees retirement association;

(10) licensed medical, psychological or dental arts practitioners providing services to the children, youth and families department pursuant to contract;

(11) members of the board of directors of the New Mexico educational assistance foundation;

(12) members of the board of directors of the New Mexico student loan guarantee corporation;

(13) members of the New Mexico mortgage finance authority;

(14) volunteers, employees and board members of court-appointed special advocate programs; and

(15) members of the board of directors of the small business investment corporation;

G. "scope of duty" means performing any duties that a public employee is requested, required or authorized to perform by the governmental entity, regardless of the time and place of performance; and

H. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."

Section 4. Section 58-29-1 NMSA 1978 (being Laws 2000, Chapter 97, Section 3) is amended to read:

"58-29-1. SHORT TITLE.--Chapter 58, Article 29 NMSA 1978 may be cited as the "Small Business Investment Act"."

Section 5. Section 58-29-2 NMSA 1978 (being Laws 2000, Chapter 97, Section 4) is amended to read:

"58-29-2. PURPOSES.--The purposes of the Small Business Investment Act are to:

A. implement the provisions of Subsection D of Section 14 of Article 9 of the constitution of New Mexico to create new job opportunities by providing capital for

land, buildings or infrastructure for facilities to support new or expanding businesses;
and

B. otherwise make debt investments and equity investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico."

Section 6. Section 58-29-3 NMSA 1978 (being Laws 2000, Chapter 97, Section 5) is amended to read:

"58-29-3. DEFINITIONS.--As used in the Small Business Investment Act:

A. "board" means the small business investment corporation's board;

B. "corporation" means the small business investment corporation;

C. "debt investment" means direct or indirect loans or other debt obligations, the proceeds of which shall be used to:

(1) support the acquisition or development of land, buildings or infrastructure;

(2) create job opportunities; or

(3) otherwise enhance the economic development objectives of the state;

D. "equity investment" means direct or indirect ownership interests in New Mexico businesses, the proceeds of which investment shall be used to:

(1) support the acquisition or development of land, buildings or infrastructure;

(2) create job opportunities; or

(3) otherwise enhance the economic development objectives of the state;

E. "fund" means the small business investment corporation fund;

F. "New Mexico business" means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico or, in the case of a limited partnership, a business with its principal place of business and eighty percent of its assets located in New Mexico; and

G. "president" means the president of the corporation."

Section 7. Section 58-29-4 NMSA 1978 (being Laws 2000, Chapter 97, Section 6, as amended) is amended to read:

"58-29-4. SMALL BUSINESS INVESTMENT CORPORATION CREATED--
POWERS OF THE CORPORATION.--

A. The "small business investment corporation" is created as a nonprofit, independent, public corporation. The corporation may:

(1) sue and be sued in all actions arising out of any act or omission in connection with its business or affairs;

(2) enter into any contracts or obligations relating to the corporation that are authorized or permitted by law;

(3) cooperate with small business development centers, regional economic development districts and parties that have demonstrated abilities and relationships in providing financial services to new and emerging businesses;

(4) make investments that consider the enhancement of economic development objectives of the state as described in the Small Business Investment Act; and

(5) make, alter or repeal such rules with respect to the corporation's operations as are necessary to carry out its functions and duties in the administration of the Small Business Investment Act.

B. The corporation shall not be considered a state agency for any purpose. The corporation is exempted from the provisions of the Personnel Act and the Procurement Code.

C. Except as provided in the Tort Claims Act, the state shall not be liable for any obligations incurred by the corporation."

Section 8. Section 58-29-5 NMSA 1978 (being Laws 2000, Chapter 97, Section 7, as amended) is amended to read:

"58-29-5. CORPORATION BOARD OF DIRECTORS--APPOINTMENT--
POWERS.--

A. The corporation shall be governed by the board. The corporation's board of directors shall consist of:

- (1) the state treasurer or his designee;
- (2) the state investment officer or his designee;
- (3) six members appointed by the governor.

B. Each director shall hold office for the length of his term in office or until a successor is appointed or elected and begins service on the board.

C. The governor shall appoint, with the consent of the senate, the six public directors of the board who shall serve at the pleasure of the governor.

D. The governor's appointees to the board shall be public members who have general expertise in small business management, but they shall not be employed by or represent small businesses receiving equity investments from the corporation.

E. No two members of the board shall be employed by or represent the same company or institution.

F. The board shall annually elect a chairman from among its members and shall elect those other officers it determines necessary for the performance of its duties.

G. The power to set the policies and procedures for the corporation is vested in the board. The board may perform all acts necessary or appropriate to exercise that power.

H. Public members of the board shall be reimbursed for attending meetings of the board as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

I. Public members of the board are appointed public officials of the state while carrying out their duties and activities under the Small Business Investment Act. The directors and the employees of the corporation are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the corporation or for any act performed or obligation entered into in an official capacity when done in good faith, without intent to defraud and in connection with the administration, management or conduct of the corporation or affairs relating to it.

J. The board shall conduct an annual audit of the books of accounts, funds and securities of the corporation to be made by a competent and independent firm of certified public accountants. A copy of the audit report shall be filed with the president. The audit shall be open to the public for inspection."

Section 9. A new section of the Small Business Investment Act is enacted to read:

"PERMITTED INVESTMENTS.--The corporation may:

A. make equity investments in New Mexico businesses, provided that:

(1) the investments are made in conjunction with cooperative agreements with parties that have demonstrated abilities and relationships in providing financial services to new and emerging businesses;

(2) an equity investment in any one business may not exceed ten percent of the fund; and

(3) the investments represent no more than forty-nine percent of the total amount of equity from invested capital of a business; or

B. make debt investments in New Mexico businesses, provided that:

(1) the investments are made in conjunction with cooperative agreements with parties that have demonstrated abilities and relationships in providing financial services to new and emerging businesses; and

(2) a debt investment in any one business may not exceed ten percent of the fund."

Section 10. A new section of the Small Business Investment Act is enacted to read:

"RETURN TO SEVERANCE TAX PERMANENT FUND.--Annually, no later than thirty days after the delivery of its annual report to the governor and the legislative finance committee, the corporation shall return to the severance tax permanent fund an amount equal to the net excess of funds held by the corporation. For purposes of this section, "net excess of funds" means the return on investments to the corporation in the amount of dividends and interest actually received plus any capital gains actually realized, less the operating expenses of the corporation and less amounts reasonably reserved for losses."

Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 80, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 400

CHAPTER 400, LAWS 2003

AN ACT

RELATING TO TAXATION; CREATING THE JOB MENTORSHIP TAX CREDIT; PROVIDING INCOME TAX AND CORPORATE INCOME TAX CREDITS FOR EMPLOYMENT OF YOUTH PARTICIPATING IN CAREER PREPARATION EDUCATION PROGRAMS.

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

Section 1. A new section of the Income Tax Act is enacted to read:

"JOB MENTORSHIP TAX CREDIT.--

A. To encourage New Mexico businesses to hire youth participating in career preparation education programs, a taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who is an owner of a New Mexico business may claim a credit in an amount equal to fifty percent of gross wages paid to qualified students who are employed by the business during the taxable year for which the return is filed. The tax credit provided by this section may be referred to as the "job mentorship tax credit".

B. A taxpayer who is an owner of a New Mexico business may claim the job mentorship tax credit for each taxable year in which the business employs one or more qualified students. The maximum aggregate credit allowable shall not exceed fifty percent of the gross wages paid to not more than ten qualified students employed by the business for up to three hundred twenty hours of employment of each qualified student in each taxable year for a maximum of three taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of twelve thousand dollars (\$12,000) in any taxable year. The taxpayer shall certify that hiring the qualified student does not displace or replace a current employee.

C. The department shall issue job mentorship tax credit certificates upon request to any accredited New Mexico secondary school that has a school-sanctioned career preparation education program. The maximum number of certificates that may be issued in a school year to any one school is equal to the number of qualified students in the school-sanctioned career preparation education program on October 15 of that school year, as certified by the school principal.

D. A job mentorship tax credit certificate may be executed by a school principal with respect to a qualified student, and the executed certificate may be transferred to a New Mexico business that employs that student. By executing the certificate with respect to a student, the school principal certifies that the school has a

school-sanctioned career preparation education program and the student is a qualified student.

E. To claim the job mentorship tax credit, the taxpayer must submit with respect to each employee for whom the credit is claimed:

(1) a properly executed job mentorship tax credit certificate;

(2) information required by the secretary with respect to the employee's employment by the business during the taxable year for which the credit is claimed; and

(3) information required by the secretary that the employee was not also employed in the same taxable year by another New Mexico business qualifying for and claiming a job mentorship tax credit for that employee pursuant to this section or the Corporate Income and Franchise Tax Act.

F. The job mentorship tax credit may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year. Any portion of the maximum credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years; provided the total credits claimed under this section shall not exceed the maximum allowable pursuant to Subsection B of this section.

G. 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 credit that would have been allowed on a joint return.

H. A taxpayer who otherwise qualifies for and claims a job mentorship tax credit for employment of qualified students by a partnership, limited partnership, limited liability company, S corporation or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership, limited partnership, limited liability company, S corporation or association. The total credit claimed by all members of the business shall not exceed the maximum credit allowable pursuant to Subsection B of this section.

I. As used in this section:

(1) "career preparation education program" means a work-based learning or school-to-career program designed for secondary school students to create academic and career goals and objectives and find employment in a job meeting those goals and objectives;

(2) "New Mexico business" means a partnership, limited partnership, limited liability company treated as a partnership for federal income tax purposes, S corporation or sole proprietorship that carries on a trade or business in

New Mexico and that employs in New Mexico fewer than three hundred full-time employees at any one time during the taxable year; and

(3) "qualified student" means an individual who is at least fourteen years of age but not more than twenty-one years of age who is attending full time an accredited New Mexico secondary school and who is a participant in a career preparation education program sanctioned by the secondary school."

Section 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"JOB MENTORSHIP TAX CREDIT.--

A. To encourage New Mexico businesses to hire youth participating in career preparation education programs, a taxpayer that is a New Mexico business and that files a corporate income tax return may claim a credit in an amount equal to fifty percent of gross wages paid to qualified students who are employed by the taxpayer during the taxable year for which the return is filed. The tax credit provided by this section may be referred to as the "job mentorship tax credit".

B. A taxpayer may claim the job mentorship tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified students. The maximum aggregate credit allowable shall not exceed fifty percent of the gross wages paid to not more than ten qualified students employed by the taxpayer for up to three hundred twenty hours of employment of each qualified student in each taxable year for a maximum of three taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of twelve thousand dollars (\$12,000) in any taxable year. The employer shall certify that hiring the qualified student does not displace or replace a current employee.

C. The department shall issue job mentorship tax credit certificates upon request to any accredited New Mexico secondary school that has a school-sanctioned career preparation education program. The maximum number of certificates that may be issued in a school year to any one school is equal to the number of qualified students in the school-sanctioned career preparation education program on October 15 of that school year, as certified by the school principal.

D. A job mentorship tax credit certificate may be executed by a school principal with respect to a qualified student, and the executed certificate may be transferred to a New Mexico business that employs that student. By executing the certificate with respect to a student, the school principal certifies that the school has a school-sanctioned career preparation education program and the student is a qualified student.

E. To claim the job mentorship tax credit, the taxpayer must submit with respect to each employee for whom the credit is claimed:

(1) a properly executed job mentorship tax credit certificate;

(2) information required by the secretary with respect to the employee's employment by the taxpayer during the taxable year for which the credit is claimed; and

(3) information required by the secretary that the employee was not also employed in the same taxable year by another New Mexico business qualifying for and claiming a job mentorship tax credit for that employee pursuant to this section or the Income Tax Act.

F. The job mentorship tax credit may only be deducted from the taxpayer's corporate income tax liability for the taxable year. Any portion of the maximum credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years; provided the total credits claimed pursuant to this section shall not exceed the maximum allowable under Subsection B of this section.

G. As used in this section:

(1) "career preparation education program" means a work-based learning or school-to-career program designed for secondary school students to create academic and career goals and objectives and find employment in a job meeting those goals and objectives;

(2) "New Mexico business" means a corporation that carries on a trade or business in New Mexico and that employs in New Mexico fewer than three hundred full-time employees during the taxable year; and

(3) "qualified student" means an individual who is at least fourteen years of age but not more than twenty-one years of age who is attending full time an accredited New Mexico secondary school and who is a participant in a career preparation education program sanctioned by the secondary school."

Section 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2003.

HOUSE BILL 572

CHAPTER 401

CHAPTER 401, LAWS 2003

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING FOR EXPANDED INVESTMENT OBJECTIVES OF THE STATE INVESTMENT OFFICER.

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

Section 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended by Laws 2001, Chapter 238, Section 1 and by Laws 2001, Chapter 252, Section 10) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS INVESTMENTS.--

A. No more than six percent of the market value of the severance tax permanent fund may be invested in New Mexico private equity funds or New Mexico businesses under this section.

B. In making investments pursuant to Subsection A of this section, the council shall make investments in New Mexico private equity funds or New Mexico businesses whose investments or enterprises enhance the economic development objectives of the state.

C. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council, upon review of the recommendation of the private equity investment advisory committee and within guidelines and policies established by the council.

D. As used in this section:

(1) "New Mexico business" means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico or, in the case of a limited partnership, a business with its principal place of business and eighty percent of its assets located in New Mexico; and

(2) "New Mexico private equity fund" means a 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 or debt of businesses for the purpose of providing capital for start-up, expansion, product or market development, recapitalization or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments;

(c) 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;

(d) 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

(e) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, (15 USCA Section 77(b)) and rules and regulations promulgated pursuant to that section.

E. The state investment officer is authorized to make investments in New Mexico businesses to create new job opportunities and to support new, emerging or expanding businesses in a manner consistent with the constitution of New Mexico if:

(1) the investments are made in conjunction with cooperative investment agreements with parties that have demonstrated abilities and relationships in making investments in new, emerging or expanding businesses;

(2) an investment in any one business does not exceed ten percent of the amount available for investment pursuant to this section; and

(3) the investments represent no more than fifty-one percent of the total investment capital in a business; provided, however, that nothing in this subsection prohibits the ownership of more than fifty-one percent of the total investment capital in a New Mexico business if the additional ownership interest:

(a) is due to foreclosure or other action by the state investment officer pursuant to agreements with the business or other investors in that business;

(b) is necessary to protect the investment; and

(c) does not require an additional investment of the severance tax permanent fund.

F. The state investment officer shall make a commitment to the small business investment corporation pursuant to the Small Business Investment Act to invest one-fourth percent of the market value of the severance tax permanent fund by July 1, 2001 to create new job opportunities by providing capital for land, buildings or

infrastructure for facilities to support new or expanding businesses and to otherwise make investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico. On July 1, 2003 and on each July 1 thereafter, the state investment officer shall determine whether the invested capital in the small business investment corporation is less than one-fourth percent of the market value of the severance tax permanent fund. If the invested capital in the small business investment corporation equals less than one-fourth percent of the market value of the severance tax permanent fund, further commitments shall be made until the invested capital is equal to one-fourth percent of the market value of the fund.

G. The state investment officer shall report semiannually on the New Mexico private equity investments made pursuant to this section. Annually, a report shall be submitted to the legislature prior to the beginning of each regular legislative session and a second report no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committee. Each report shall provide the amounts invested in each New Mexico private equity fund, as well as information about the objectives of the funds, the companies in which each fund is invested and how each investment enhances the economic development objectives of the state. Each report shall provide the amounts invested in each New Mexico business."

HOUSE BILL 918, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 402

CHAPTER 402, LAWS 2003

AN ACT

RELATING TO TAXATION; AMENDING CERTAIN PROVISIONS OF THE INVESTMENT CREDIT ACT.

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

Section 1. Section 7-9A-7.1 NMSA 1978 (being Laws 1983, Chapter 206, Section 6, as amended by Laws 2001, Chapter 57, Section 4 and by Laws 2001, Chapter 337, Section 4) is amended to read:

"7-9A-7.1. EMPLOYMENT REQUIREMENTS.--

A. Prior to July 1, 2011, to be eligible to claim a credit pursuant to the Investment Credit Act, the taxpayer shall employ the equivalent of one full-time employee who has not been counted to meet this employment requirement for any prior claim in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for the credit for every:

(1) five hundred thousand dollars (\$500,000), or portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars (\$30,000,000); and

(2) one million dollars (\$1,000,000), or portion of that amount, in value of qualified equipment over thirty million dollars (\$30,000,000) claimed by the taxpayer in a taxable year in the same claim.

B. After June 30, 2011, for every one hundred thousand dollars (\$100,000) in value of qualified equipment claimed by a taxpayer in a taxable year, the taxpayer shall employ the equivalent of one full-time employee in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for credit.

C. The department may require evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed earlier than one year prior to the day on which the taxpayer applies for the credit, if he was only being trained prior to that date or his employment is necessitated by the use of the qualified equipment."

HOUSE BILL 179

CHAPTER 403

CHAPTER 403, LAWS 2003

AN ACT

RELATING TO EXECUTIVE REORGANIZATION; PERMITTING THE GOVERNOR TO REORGANIZE CERTAIN AGENCIES BY EXECUTIVE ORDER IN 2003 TO MAKE THEM CABINET-LEVEL DEPARTMENTS; REQUIRING LEGISLATIVE APPROVAL OF SUCH EXECUTIVE ORDER REORGANIZATIONS; RENAMING THE NATIONAL HISPANIC CULTURAL CENTER OF NEW MEXICO; PROVIDING FOR TRANSFERS OF FUNCTIONS, PERSONNEL, APPROPRIATIONS, MONEY AND PROPERTY.

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

Section 1. PURPOSE--ELEVATING STATE AGENCIES TO CABINET-LEVEL DEPARTMENTS.--

A. The purpose of elevating the state agency on aging to a cabinet-level department is to:

(1) implement and administer the requirements of the federal Older Americans Act of 1965 and other programs, services and policies that were administered by the state agency on aging;

(2) develop programs and unified public policies that address the needs of the aging population, their families and caregivers;

(3) develop programs and unified public policies that address the long-term care system in New Mexico and focus on creation of a seamless, comprehensive, efficient and cost-effective home- and community-based long-term care system;

(4) create and organize divisions to carry out the purposes identified in this section, including but not limited to, consumer rights and advocacy, aging network services and long-term care divisions;

(5) work with consumers, advocacy organizations, providers, other departments, stakeholders and the legislative health and human services committee to develop a comprehensive plan to provide long-term care and related services for an older adult population; and

(6) develop a comprehensive plan to coordinate, reorganize and consolidate older adult services by June 30, 2004.

B. The purpose of elevating the office of cultural affairs to a cabinet-level department is to:

(1) develop programs and unified public policies for cultural affairs;
and

(2) improve and enhance educational, historical, archaeological and architectural preservation, collections and other cultural services for the state.

C. The purpose of elevating the New Mexico office of Indian affairs to a cabinet-level department is to:

(1) investigate, study, consider and act upon the entire subject of Indian conditions and relations within the state, including issues of health, economy, education, legislation, safety, welfare and local, state and federal government;

(2) ensure coordination between state government and tribal governments, including technical assistance, advocacy and informational services; program and fiscal management; and capital outlay management, through methods that promote effective tribal and state working relationships for provision of quality services; and

(3) provide a conduit for state and tribal government-to-government relations that increases each sovereign's ability to respond more effectively to the issues and needs of the state's Native American communities and citizens.

D. The purpose of elevating the New Mexico veterans' service commission to a cabinet-level department is to:

(1) develop programs and unified public policies that address the needs of veterans and their families; and

(2) develop and expand outreach and education to improve the quality of life for veterans and their families.

Section 2. EXECUTIVE REORGANIZATION--EXECUTIVE ORDER-- TRANSFERS--LEGISLATIVE APPROVAL.--

A. The governor may, by executive order issued in 2003, make the following state agencies cabinet-level departments:

(1) the state agency on aging may become the aging and long-term care department;

(2) the office of cultural affairs may become the cultural affairs department;

(3) the New Mexico office of Indian affairs may become the Indian affairs department; and

(4) the New Mexico veterans' service commission may become the veterans' service department.

B. Functions, personnel, appropriations, money, records, files, furniture, equipment and other property of an agency specified in Subsection A of this section shall be transferred to the resulting department. Contractual and statutory obligations of the original agency shall be obligations of the resulting department.

C. The executive order relating to the state agency on aging may provide for the transfer of functions, personnel, appropriations, money, records, files, furniture, equipment, supplies and other property of the children, youth and families department,

human services department and department of health pertaining to adult services to the aging and long-term care department.

D. The governor, with the advice and consent of the senate, shall appoint a secretary for each of the cabinet-level departments created pursuant to Subsection A of this section.

E. If a bill of the forty-sixth legislature, second session, approving an executive reorganization undertaken pursuant to Subsection A of this section is not enacted into law, that reorganization is void.

Section 3. Section 18-12-1 NMSA 1978 (being Laws 1993, Chapter 42, Section 1, as amended) is amended to read:

"18-12-1. SHORT TITLE.--Chapter 18, Article 12 NMSA 1978 may be cited as the "National Hispanic Cultural Center Act"."

Section 4. Section 18-12-2 NMSA 1978 (being Laws 1993, Chapter 42, Section 2, as amended) is amended to read:

"18-12-2. DEFINITIONS.--As used in the National Hispanic Cultural Center Act:

- A. "board" means the board of directors of the center;
- B. "center" means the national Hispanic cultural center;
- C. "division" means the Hispanic cultural division of the office of cultural affairs; and
- D. "executive director" means the executive director of the division."

Section 5. Section 18-12-3 NMSA 1978 (being Laws 1993, Chapter 42, Section 3, as amended) is amended to read:

"18-12-3. HISPANIC CULTURAL DIVISION--CREATION--PROPERTY.--

A. The "Hispanic cultural division" is created within the office of cultural affairs. A principal facility of this division shall be known as the "national Hispanic cultural center".

B. All property, real or personal, now held or subsequently acquired for the operation of the center shall be under the control and authority of the board.

C. Funds or other property received by gift, endowment or legacy shall remain under the control of the board and shall, upon acceptance, be employed for the purpose specified."

Section 6. Section 18-12-4 NMSA 1978 (being Laws 1993, Chapter 42, Section 4, as amended) is amended to read:

"18-12-4. BOARD OF DIRECTORS--CREATED--APPOINTMENT--TERMS--OFFICERS.--

A. The "board of directors of the national Hispanic cultural center" is created. The board shall consist of fifteen residents of New Mexico appointed by the governor with the advice and consent of the senate. Two of the appointees shall be employees of state institutions of higher education or appropriate state agencies. In making the appointments, the governor shall give due consideration to:

(1) the ethnic, economic and geographic diversity of the state;

(2) individuals who have demonstrated an awareness of and support for traditional and contemporary Hispanic culture, arts and humanities, including a strong knowledge of New Mexico Hispanic history; and

(3) individuals who are knowledgeable in the areas of Hispanic performing, visual and oral arts, genealogy, family issues, education, business and administration.

B. Of the initial appointees, five members shall be appointed for four-year terms, five members shall be appointed for three-year terms and five members shall be appointed for two-year terms. All subsequent members shall be appointed for four-year terms.

C. A majority of the board members currently serving shall constitute a quorum at any meeting or hearing.

D. Any member failing to attend three consecutive meetings after receiving proper notice shall be recommended for removal by the governor. The governor may also remove any member of the board for neglect of any duty required by law, for incompetency, for unprofessional conduct or for violating any provisions of the National Hispanic Cultural Center Act. If a vacancy occurs on the board, the governor shall appoint another member to complete the unexpired term.

E. The executive director shall be an ex-officio nonvoting member of the board.

F. The governor shall designate the president of the board, who shall serve in that capacity at the pleasure of the governor."

HOUSE FLOOR SUBSTITUTE FOR HOUSE
APPROPRIATIONS AND FINANCE COMMITTEE
SUBSTITUTE FOR HOUSE BILL 585, AS AMENDED

CHAPTER 404

CHAPTER 404, LAWS 2003

AN ACT

RELATING TO INTERNATIONAL RELATIONS; PROVIDING FOR COORDINATION OF NEW MEXICO-MEXICO RELATIONS AND BORDER DEVELOPMENT IN THE ECONOMIC DEVELOPMENT DEPARTMENT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 9-15-4 NMSA 1978 (being Laws 1983, Chapter 297, Section 4, as amended) is amended to read:

"9-15-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "economic development department". The department shall be a cabinet department and shall consist of, but not be limited to, six divisions as follows:

- A. the administrative services division;
- B. the economic development division;
- C. the New Mexico film division;
- D. the technology enterprise division;
- E. the trade and Mexican affairs division; and
- F. the space commercialization division."

Section 2. Section 9-15-29 NMSA 1978 (being Laws 1988, Chapter 80, Section 3, as amended) is amended to read:

"9-15-29. DEFINITIONS.--As used in Sections 9-15-28 through 9-15-34 NMSA 1978:

A. "department" means the economic development department;

B. "director" means the director of the trade and Mexican affairs division of the economic development department; and

C. "secretary" means the secretary of economic development."

Section 3. Section 9-15-30 NMSA 1978 (being Laws 1988, Chapter 80, Section 4) is amended to read:

"9-15-30. TRADE AND MEXICAN AFFAIRS DIVISION CREATED--DUTIES.--

A. The "trade and Mexican division" is created as a division of the department.

B. The division shall be responsible for conducting and coordinating the state's relations with the Republic of Mexico and the state of Chihuahua and shall promote New Mexico products and services. The division is created to:

(1) coordinate activities of the department, the tourism department, the office of cultural affairs, the state highway and transportation department, the department of health, the department of environment, the department of public safety, the New Mexico border commission, the border authority and the joint border research institute at New Mexico state university as those activities relate to improving New Mexico-Mexico relations and trade and encouraging or funding appropriate border development;

(2) promote New Mexico products and services to potential domestic and international consumers;

(3) establish a central registry for New Mexico products and services;

(4) develop, maintain and use a data base of potential domestic and international consumers of New Mexico products and services; and

(5) foster, coordinate and support the efforts of individuals and organizations involved in the promotion of New Mexico products and services to consumers.

C. The division shall provide periodic reports to the New Mexico finance authority oversight committee on its activities and the activities of the state pertaining to New Mexico-Mexico relations, trade and border development."

Section 4. REPEAL.--Section 9-15-28 NMSA 1978 (being Laws 1988, Chapter 80, Section 2, as amended) is repealed.

SENATE CORPORATIONS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR SENATE BILL 108,
AS AMENDED, WITH CERTIFICATE OF CORRECTION

CHAPTER 405

CHAPTER 405, LAWS 2003

AN ACT

RELATING TO PROPERTY TAXATION; AMENDING THE DEVELOPMENT INCENTIVE ACT AUTHORIZING MUNICIPALITIES AND COUNTIES TO PROVIDE A PROPERTY TAX EXEMPTION FOR COMMERCIAL PERSONAL PROPERTY OF CERTAIN BUSINESS FACILITIES.

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

Section 1. Section 3-64-1 NMSA 1978 (being Laws 1991, Chapter 163, Section 1) is amended to read:

"3-64-1. SHORT TITLE.--Chapter 3, Article 64 NMSA 1978 may be cited as the "Community Development Incentive Act"."

Section 2. Section 3-64-2 NMSA 1978 (being Laws 1991, Chapter 163, Section 2) is amended to read:

"3-64-2. DEFINITIONS.--

A. As used in the Community Development Incentive Act:

(1) "commencement of commercial operations" occurs when the new business facility is first available for use by the taxpayer or first capable of being used by the taxpayer in the revenue-producing enterprise in which the taxpayer intends to use the new business facility;

(2) "facility" means any factory, mill, plant, refinery, warehouse, dairy, feedlot, building or complex of buildings located within the state, including the

land on which the facility is located and all machinery, equipment and other real and tangible personal property located at or within the facility and used in connection with the operation of the facility;

(3) "new business facility" means a facility 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; if the taxpayer employs only a portion of the facility in the operation of a revenue-producing enterprise and leases another portion of the facility to another person or does not otherwise use such other portions in the operation of a revenue-producing enterprise, the portion employed by the taxpayer in the operation of a revenue-producing enterprise shall be considered a "new business facility" if the requirements of Subparagraphs (b), (c) and (d) of this paragraph are satisfied;

(b) the facility is acquired by or leased to the taxpayer on or after July 1, 2003; provided, 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) if the facility was acquired by the taxpayer from another person and the facility was employed, immediately prior to the transfer of title to the facility to the taxpayer or to the commencement of the term of the lease of the facility to the taxpayer, by any other person in the operation of a revenue-producing enterprise, the taxpayer does not continue the operation of the same or a substantially identical revenue-producing enterprise at the facility; and

(d) the facility is not a replacement business facility;

(4) "new business facility employee" means a person employed by the taxpayer in the operation of a new business facility during the taxable year for which the exemption authorized by Section 3-64-3 NMSA 1978 is granted; a person shall be considered to have been so employed if the person performs duties in connection with the operation of the new business facility on:

(a) a regular, full-time basis;

(b) a part-time basis if the person is customarily performing the described duties at least twenty hours per week throughout the taxable year; or

(c) a seasonal basis if the person performs the described duties for substantially all of the season customary for the position in which the person is employed.

The number of new business facility employees during any property tax year shall be determined by dividing by twelve the sum of the number of new business facility employees on the last business day of each month of that year. If the new business facility is in operation for less than the entire property tax year, the number of new business facility employees shall be determined by dividing the sum of the number of new business facility employees on the last business day of each full calendar month during the portion of the property tax year during which the new business facility was in operation by the number of full calendar months during that period;

(5) "new business facility investment" means the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, that constitutes the new business facility or that is used by the taxpayer in the operation of the new business facility during the property tax year for which the exemption authorized by Section 3-64-3 NMSA 1978 is granted and the value of that property during the year shall be:

(a) its original cost if owned by the taxpayer; or

(b) eight times the net annual rental rate if leased by the taxpayer; the "net annual rental rate" is the annual rental rate paid by the taxpayer, less any annual rental rate received by the taxpayer from subrentals;

(6) "related taxpayer" means:

(a) a corporation, partnership, limited liability company, trust or association controlled by the taxpayer;

(b) an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer; or

(c) a corporation, limited liability company, partnership, trust or association controlled by an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer.

For the purposes of this paragraph, "control of a corporation" means ownership, directly or indirectly, of stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and at least eighty percent of all other classes of stock of the corporation; "control of a partnership, limited liability company or association" means ownership of at least eighty percent of the capital or profits interest in such partnership, limited liability company or association; and "control of a trust" means ownership, directly or indirectly, of at least eighty percent of the beneficial interest in the principal or income of the trust;

(7) "replacement business facility" means a facility as defined in Paragraph (3) of this subsection and referred to in this paragraph as a "new facility" that replaces another facility, referred to in this paragraph as an "old facility", located within the state in which the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first property tax year in which the exemption authorized by Section 3-64-3 NMSA 1978 is claimed; a new facility shall be deemed to replace an old facility if the following conditions are met:

(a) the old facility was operated by the taxpayer or a related taxpayer for more than three full property tax years out of the five property tax years next preceding the property tax year in which commencement of commercial operations occurs at the new facility; and

(b) the old facility was employed by the taxpayer or a related taxpayer in the operation of a revenue-producing enterprise and the taxpayer continues the operation of the same or a substantially identical revenue-producing enterprise at the new facility.

Notwithstanding the provisions of Subparagraph (a) of this paragraph, a facility shall not be considered a "replacement business facility" if the taxpayer's investment in the new facility exceeds three million dollars (\$3,000,000) or, if less, three hundred percent of the investment in the old facility by the taxpayer or related taxpayer. The investment in the new facility and in the old facility shall be determined in the manner provided in Paragraph (5) of this subsection;

(8) "revenue-producing enterprise" means:

(a) the production, assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(b) the storage, warehousing, distribution or sale of any products of agriculture, mining or manufacturing;

(c) the feeding of livestock at a feedlot;

(d) the operation of laboratories or other facilities for scientific, agricultural animal husbandry or industrial research development;

(e) the generation of electricity;

(f) the performance of services of any type;

(g) the administrative management of any of the activities listed in Subparagraphs (a) through (f) of this paragraph; or

(h) any combination of any of the activities referred to in Subparagraphs (a) through (g) of this paragraph; and

(9) "same or a substantially identical revenue-producing enterprise" means a revenue-producing enterprise in which the products produced or sold, the services performed or the activities conducted are the same in character and use and are produced, sold, performed or conducted in the same manner and to or for the same types of customers as the products, services or activities produced, sold, performed or conducted in another revenue-producing enterprise.

B. The new business facility investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the property tax year. If the new business facility is in operation for less than an entire property tax year, the new business facility investment shall be determined by dividing the sum of the total value of the property on the last business day of each full calendar month during the portion of the property tax year during which the new business facility was in operation by the number of full calendar months during that period.

C. If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility eligible for the exemption authorized by Section 3-64-3 NMSA 1978 if:

(1) the taxpayer's investment in the expansion exceeds one million dollars (\$1,000,000) or, if less, one hundred percent of its investment in the original facility prior to expansion; and

(2) the expansion otherwise constitutes a new business facility.

The taxpayer's investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in Paragraph (5) of Subsection A of this section.

D. If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility for purposes of the exemption granted by Section 3-64-3 NMSA 1978 if:

(1) the expansion results in the employment of ten or more new business facility employees over and above the average number of employees employed in the county or municipality granting the exemption by the taxpayer during the twelve months immediately prior to the expansion, computed pursuant to Paragraph (4) of Subsection A of this section; and

(2) the expansion otherwise constitutes a new business facility."

Section 3. Section 3-64-3 NMSA 1978 (being Laws 1991, Chapter 163, Section 3) is amended to read:

"3-64-3. EXEMPTION OF CERTAIN COMMERCIAL PERSONAL PROPERTY FROM PROPERTY TAX BY LOCAL BODIES.--

A. The governing body of a county or a municipality may by a majority vote of the members elected to the governing body adopt a resolution exempting commercial personal property of a new business facility located in the county or municipality from the imposition of any property tax on commercial personal property authorized to be imposed by the respective governing body, subject to the limitations of Subsection B of this section.

B. The exemption authorized by Subsection A of this section may be for up to one hundred percent of the value for property taxation purposes of the property exempted.

C. The exemption authorized by Subsection A of this section may be for any period of time not to exceed twenty years. The effective date of any exemption shall be January 1 of the property tax year in which the new business facility commences commercial operations."

Section 4. Section 3-64-5 NMSA 1978 (being Laws 1991, Chapter 163, Section 5) is amended to read:

"3-64-5. EXPIRATION OF EXEMPTION--ACTION OF ASSESSOR.--An exemption granted under Section 3-64-3 NMSA 1978 shall automatically terminate on the last day of the property tax year in which it expires pursuant to the exemption resolution or on the last day of the property tax year in which a new business facility ceases commercial operations, whichever occurs first."

SENATE BILL 744, AS AMENDED

CHAPTER 406

CHAPTER 406, LAWS 2003

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING FOR EXPANDED INVESTMENT OBJECTIVES OF THE STATE INVESTMENT OFFICER.

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

Section 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended by Laws 2001, Chapter 238, Section 1 and by Laws 2001, Chapter 252, Section 10) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS INVESTMENTS.--

A. No more than six percent of the market value of the severance tax permanent fund may be invested in New Mexico private equity funds or New Mexico businesses under this section.

B. In making investments pursuant to Subsection A of this section, the council shall make investments in New Mexico private equity funds or New Mexico businesses whose investments or enterprises enhance the economic development objectives of the state.

C. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council, upon review of the recommendation of the private equity investment advisory committee and within guidelines and policies established by the council.

D. As used in this section:

(1) "New Mexico business" means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico or, in the case of a limited partnership, a business with its principal place of business and eighty percent of its assets located in New Mexico; and

(2) "New Mexico private equity fund" means a 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 or debt of businesses for the purpose of providing capital for start-up, expansion, product or market development, recapitalization or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments;

(c) 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;

(d) 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

(e) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, (15 USCA Section 77(b)) and rules and regulations promulgated pursuant to that section.

E. The state investment officer is authorized to make investments in New Mexico businesses to create new job opportunities and to support new, emerging or expanding businesses in a manner consistent with the constitution of New Mexico if:

(1) the investments are made in conjunction with cooperative investment agreements with parties that have demonstrated abilities and relationships in making investments in new, emerging or expanding businesses;

(2) an investment in any one business does not exceed ten percent of the amount available for investment pursuant to this section; and

(3) the investments represent no more than fifty-one percent of the total investment capital in a business; provided, however, that nothing in this subsection prohibits the ownership of more than fifty-one percent of the total investment capital in a New Mexico business if the additional ownership interest:

(a) is due to foreclosure or other action by the state investment officer pursuant to agreements with the business or other investors in that business;

(b) is necessary to protect the investment; and

(c) does not require an additional investment of the severance tax permanent fund.

F. The state investment officer shall make a commitment to the small business investment corporation pursuant to the Small Business Investment Act to invest one-fourth percent of the market value of the severance tax permanent fund by July 1, 2001 to create new job opportunities by providing capital for land, buildings or infrastructure for facilities to support new or expanding businesses and to otherwise make investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico. On July 1, 2003 and on each July 1 thereafter, the state investment officer shall determine whether the invested capital in the small business investment corporation is less than one-fourth percent of the market value of the severance tax permanent fund. If the invested capital in the small business investment corporation equals less than one-fourth percent of the

market value of the severance tax permanent fund, further commitments shall be made until the invested capital is equal to one-fourth percent of the market value of the fund.

G. The state investment officer shall report semiannually on the New Mexico private equity investments made pursuant to this section. Annually, a report shall be submitted to the legislature prior to the beginning of each regular legislative session and a second report no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committee. Each report shall provide the amounts invested in each New Mexico private equity fund, as well as information about the objectives of the funds, the companies in which each fund is invested and how each investment enhances the economic development objectives of the state. Each report shall provide the amounts invested in each New Mexico business."

SENATE BILL 779, AS AMENDED

CHAPTER 407

CHAPTER 407, LAWS 2003

AN ACT

RELATING TO MAGISTRATE COURTS; PROVIDING FOR A MEDIATION FEE IN CIVIL CASES; CREATING A FUND.

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

Section 1. MAGISTRATE COURT MEDIATION FUND CREATED-- ADMINISTRATION--DISTRIBUTION.--

A. The "magistrate court mediation fund" is created in the state treasury. The fund shall be administered by the administrative office of the courts.

B. All balances in the magistrate court mediation fund are subject to appropriation for payment to magistrate courts for the purpose of funding and administering voluntary mediation programs. The mediation programs shall be established by supreme court rule for the efficient disposition of civil complaints.

C. Payments from the magistrate court mediation fund shall be made upon vouchers signed by the director of the administrative office of the courts upon warrants drawn by the secretary of finance and administration.

D. Any balance remaining in the magistrate court mediation fund at the end of a fiscal year shall not revert to the general fund.

Section 2. MAGISTRATE COSTS--MEDIATION FEE.--

A. Magistrate judges shall collect as costs a mediation fee not to exceed five dollars (\$5.00) for the docketing of civil actions, except as provided in Subsection A of Section 35-6-3 NMSA 1978.

B. The magistrate court shall pay to the administrative office of the courts the costs collected pursuant to this section in accordance with the procedures provided for in Section 35-7-4 NMSA 1978. The amount of costs collected shall be credited to the magistrate court mediation fund.

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 114, AS AMENDED

CHAPTER 408

CHAPTER 408, LAWS 2003

AN ACT

RELATING TO LICENSING; ADMINISTRATIVELY ATTACHING CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS TO THE REGULATION AND LICENSING DEPARTMENT; LIMITING THE HIRING OF STAFF, AGENTS AND ATTORNEYS OF CERTAIN PROFESSIONAL AND OCCUPATIONAL BOARDS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 61-2-5 NMSA 1978 (being Laws 1973, Chapter 353, Section 4, as amended) is amended to read:

"61-2-5. BOARD CREATED--TERMS--APPOINTMENT--CONTINUANCE--REMOVAL.--

A. There is created a six-member "board of optometry". The board shall be administratively attached to the regulation and licensing department. The board consists of four persons who have resided in and have been continuously engaged in the practice of optometry in New Mexico for at least five years immediately prior to their

appointment and two persons who shall represent the public. The public members of the board shall not have been licensed as optometrists, nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Professional members of the board shall be appointed by the governor from a list of five names for each vacancy submitted to him by the state organization affiliated with the American optometric association. Not more than one professional board member shall maintain his place of business or reside in any one county, and professional appointments shall be made on a geographical basis to effect representation of all areas of the state. Board members shall be appointed for staggered terms of five years or less, each. The term of each board member shall be made in such a manner that the term of one board member ends on June 30 of each year. Board members shall serve until their successors have been appointed and qualified. A professional member vacancy shall be filled for the unexpired term by the appointment by the governor of a licensed optometrist from the general area of the state represented by the former member. All members of the board of optometry in office on the effective date of the Optometry Act shall serve out their unexpired terms.

C. The governor may remove a member from the board for the neglect of a duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulation or for a reason that would justify the suspension or revocation of his license to practice optometry.

D. A board member shall not serve more than two consecutive terms, and a member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member unless excused for reasons set forth in board regulations.

E. In the event of a vacancy for any reason, the board secretary shall immediately notify the governor, the board members and the state optometric association of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member."

Section 2. Section 61-2-6 NMSA 1978 (being Laws 1973, Chapter 353, Section 5, as amended) is amended to read:

"61-2-6. ORGANIZATION--MEETINGS--COMPENSATION--POWERS AND DUTIES.--

A. The board shall annually elect a chairman, a vice chairman and a secretary-treasurer; each shall serve until his successor is elected and qualified.

B. The board shall meet at least annually for the purpose of examining candidates for licensure. Special meetings may be called by the chairman and shall be

called upon the written request of a majority of the board members. A majority of the board members currently serving constitutes a quorum.

C. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance.

D. The board shall:

- (1) administer and enforce the provisions of the Optometry Act;
- (2) adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules and regulations for the implementation and enforcement of the provisions of the Optometry Act;
- (3) adopt and use a seal;
- (4) administer oaths and take testimony on matters within the board's jurisdiction;
- (5) keep an accurate record of meetings, receipts and disbursements;
- (6) keep a record of examinations held, together with the names and addresses of persons taking the examinations and the examination results. Within thirty days after an examination, the board shall give written notice to each applicant examined of the results of the examination as to the respective applicant;
- (7) certify as passing each applicant who obtains a grade of at least seventy-five percent on each subject upon which he is examined; providing that an applicant failing may apply for re-examination at the next scheduled examination date;
- (8) keep a book of registration in which the name, address and license number of licensees shall be recorded, together with a record of license renewals, suspensions and revocations;
- (9) grant, deny, renew, suspend or revoke licenses to practice optometry in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Optometry Act;
- (10) develop and administer qualifications for certification for the use of topical ocular pharmaceutical agents and oral pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978, including minimum educational requirements and examination, as required by Section 61-2-10 NMSA 1978 and provide the board of pharmacy with an annual list of optometrists certified to use topical ocular pharmaceutical agents and oral pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978; and

(11) provide for the suspension of an optometrist's license for sixty days upon a determination of use of pharmaceutical agents without prior certification in accordance with Section 61-2-10 NMSA 1978, after proper notice and an opportunity to be heard before the board."

Section 3. Section 61-4-3 NMSA 1978 (being Laws 1968, Chapter 3, Section 3, as amended) is amended to read:

"61-4-3. BOARD CREATED--APPOINTMENT--OFFICERS--DUTIES--COMPENSATION.--

A. There is created the "chiropractic board".

The board shall be administratively attached to the regulation and licensing department. The board shall consist of six persons. Four shall have been continuously engaged in the practice of chiropractic in New Mexico for five years immediately prior to their appointment. Two persons shall represent the public and shall not have practiced chiropractic in this state or any other jurisdiction. A person shall not be appointed to the board who is an officer or employee of or who is financially interested in any school or college of chiropractic, medicine, surgery or osteopathy.

B. Members of the board shall be appointed by the governor for staggered terms of five years or less and in a manner that the term of one board member expires on July 1 of each year. A list of five names for each professional member vacancy shall be submitted by the New Mexico chiropractic association to the governor for his consideration in the appointment of board members. A vacancy shall be filled by appointment for the unexpired term. Board members shall serve until their successors have been appointed and qualified.

C. The board shall annually elect a chairman and a secretary-treasurer. A majority of the board constitutes a quorum. The board shall meet quarterly. Special meetings may be called by the chairman and shall be called upon the written request of two members of the board. Notification of special meetings shall be made by certified mail unless such notice is waived by the entire board and the action 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 thirty days after a meeting.

D. A board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board.

E. The board shall adopt a seal.

F. The board shall promulgate and file, in accordance with the State Rules Act, all rules and regulations necessary for the implementation and enforcement of the

provisions of the Chiropractic Physician Practice Act, including educational requirements for a chiropractic assistant.

G. The board shall cause examinations to be held at least twice a year, and all applicants shall be notified in writing of each examination.

H. The board, for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness, shall establish by regulations adopted in accordance with the provisions of the Uniform Licensing Act mandatory continuing education requirements for chiropractors licensed in this state.

I. Failure to comply with the rules and regulations adopted by the board shall be grounds for investigation, which may lead to revocation of license.

J. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance for each day necessarily spent in the discharge of their duties."

Section 4. Section 61-5A-8 NMSA 1978 (being Laws 1994, Chapter 55, Section 8) is amended to read:

"61-5A-8. BOARD CREATED.--

A. There is created the nine-member "New Mexico board of dental health care". The board shall be administratively attached to the regulation and licensing department. The board shall consist of five dentists, two dental hygienists and two public members. The dentists shall be actively practicing and have been licensed practitioners and residents of New Mexico for a period of five years preceding the date of appointment. The dental hygienist members shall be members of the committee and shall be elected annually to sit on the board by those sitting on the committee. The appointed public members shall be residents of New Mexico and shall have no financial interest, direct or indirect, in the professions regulated in the Dental Health Care Act.

B. The governor may appoint the dentist members from a list of names submitted by the New Mexico dental association. There shall be one member from each district. All board members shall serve until their successors have been appointed. A member shall not be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dentists and public members shall be for terms of five years. Dentists' appointments shall be made so that the term of one dentist member expires on July 1 of each year. Public members' five-year terms begin at the date of appointment.

D. A board member failing to attend three board or committee meetings, either regular or special, during the board member's term shall automatically be removed as a member of the board unless excused from attendance by the board for good cause shown.

E. A board member shall not serve more than two full terms.

F. In the event of a vacancy, the secretary of the board shall immediately notify the governor, the board and committee members and the New Mexico dental association of the reason for its occurrence and action taken by the board, so as to expedite appointment of a new board member.

G. The board shall meet quarterly every year. The board may also hold special meetings and emergency meetings in accordance with rules of the board upon written notice to all members of the board and committee.

H. 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; however, the secretary-treasurer may be compensated at the discretion of the board.

I. A simple majority of the board members currently serving shall constitute a quorum, provided at least two of that quorum are not dentist members and three are dentist members.

J. The board shall elect officers annually as deemed necessary to administer its duties and as provided in its rules and regulations."

Section 5. Section 61-5A-9 NMSA 1978 (being Laws 1994, Chapter 55, Section 9) is amended to read:

"61-5A-9. COMMITTEE CREATED.--

A. There is created the seven-member "New Mexico dental hygienists committee". The committee shall be administratively attached to the regulation and licensing department. The committee shall consist of five dental hygienists, one dentist and one public member. The dental hygienists shall be actively practicing and have been licensed practitioners and residents of New Mexico for a period of five years preceding the date of their appointment. The dentist and public member shall be members of the board and shall be elected annually to sit on the committee by those members sitting on the board.

B. The governor may appoint the dental hygienists from a list of names submitted by the New Mexico dental hygienists association. There may be one member from each district. The list submitted shall consist, whenever possible, of names of dental hygienists in the district being considered but may also include names of dental hygienists at-large. No more than two dental hygienists shall serve from the same

district at one time. Members shall serve until their successors have been appointed. A member shall not be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dental hygienist members shall be for terms of five years. Appointments shall be made so that the term of one dental hygienist expires on July 1 of each year.

D. A committee member failing to attend three committee or board meetings, either regular or special, during the committee member's term shall automatically be removed as a member of the committee unless excused from attendance by the committee for good cause shown. Members of the committee not sitting on the board shall not be required to attend board disciplinary hearings.

E. A committee member shall not serve more than two full terms.

F. In the event of a vacancy, the secretary of the committee shall immediately notify the governor, the committee and board members and the New Mexico dental hygienists association of the reason for its occurrence and action taken by the committee, so as to expedite appointment of a new committee member.

G. The committee shall meet quarterly every year. The committee may also hold special meetings and emergency meetings in accordance with the committee rules upon written notification to all members of the committee and the board.

H. Members of the committee shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

I. A simple majority of the committee members currently serving shall constitute a quorum, provided at least one of that quorum is not a hygienist member.

J. The committee shall elect officers annually as deemed necessary to administer its duties and as provided in the committee rules and regulations."

Section 6. Section 61-5A-10 NMSA 1978 (being Laws 1994, Chapter 55, Section 10) is amended to read:

"61-5A-10. POWERS AND DUTIES OF THE BOARD AND COMMITTEE.--In addition to any other authority provided by law, the board, and the committee where designated, shall have the power to:

A. enforce and administer the provisions of the Dental Health Care Act;

B. adopt, publish, file and revise, in accordance with the Uniform Licensing Act and the State Rules Act, all rules as may be necessary to:

(1) regulate the examination and licensure of dentists and, through the committee, regulate the examination and licensure of dental hygienists;

(2) provide for the examination and certification of dental assistants by the board;

(3) provide for the regulation of dental technicians by the board;
and

(4) regulate the practice of dentistry, dental assisting and, through the committee, regulate the practice of dental hygiene;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board or the committee, as appropriate;

E. keep an accurate record of all meetings, receipts and disbursements;

F. grant, deny, review, suspend and revoke licenses and certificates to practice dentistry, dental assisting and, through the committee, dental hygiene and censure, reprimand, fine and place on probation and stipulation dentists, dental assistants and, through the committee, dental hygienists, in accordance with the Uniform Licensing Act for any cause stated in the Dental Health Care Act;

G. maintain records in which the name, address and license number of licensees shall be recorded, together with a record of license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines;

H. establish ad hoc committees whose members shall be appointed by the chairman with the advice and consent of the board or committee, as it deems necessary for carrying on its business;

I. have the authority to pay per diem and mileage to individuals who are appointed by the board or the committee to serve on ad hoc committees;

J. have the authority to hire or contract with investigators to investigate possible violations of the Dental Health Care Act;

K. have the authority to issue investigative subpoenas prior to the issuance of a notice of contemplated action for the purpose of investigating complaints against dentists, dental assistants and, through the committee, dental hygienists licensed under the Dental Health Care Act; and

L. establish continuing education or continued competency requirements for dentists, certified dental assistants in expanded functions, dental technicians and, through the committee, dental hygienists."

Section 7. Section 61-8-5 NMSA 1978 (being Laws 1977, Chapter 221, Section 5, as amended) is amended to read:

"61-8-5. BOARD CREATED--MEMBERS--QUALIFICATIONS--TERMS--VACANCIES--REMOVAL.--

A. There is created a "board of podiatry". The board shall be administratively attached to the regulation and licensing department. The board shall consist of five members, three of whom shall be podiatrists licensed to practice in New Mexico who have been actively engaged in the practice of podiatry for at least three consecutive years immediately prior to their appointments and two members who shall represent the public and who shall not have been licensed as podiatrists, nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Members of the board required to be licensed podiatrists shall be appointed by the governor. Board members shall be appointed for staggered terms of five years each, made in a manner that the terms of not more than two board members end on December 31 of each year commencing with 1978. Board members shall serve until their successors have been appointed and qualified. A vacancy shall be filled for the unexpired term by appointment by the governor.

C. The governor may remove a member from the board for neglect of a duty required by law, for incompetence, for improper or unprofessional conduct as defined by board rule or for any reason that would justify the suspension or revocation of his license to practice podiatry.

D. A board member shall not serve more than two consecutive full terms, and a member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member unless excused for reasons set forth in board rules.

E. In the event of a vacancy, the secretary of the board shall immediately notify the governor and the board members of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member."

Section 8. Section 61-8-6 NMSA 1978 (being Laws 1977, Chapter 221, Section 6, as amended) is amended to read:

"61-8-6. BOARD ORGANIZATION--MEETINGS--COMPENSATION--POWERS AND DUTIES.--

A. The board shall hold a regular meeting at least annually and shall elect annually a chairman, vice chairman and secretary-treasurer from its membership, each of whom shall serve until his successor is selected and qualified.

B. The board shall hold a minimum of one examination for licensure each year in the month of June or July at a place and at a time designated by the board. Notice of the examination shall be given to all applicants at least thirty days prior to the date of the examination.

C. Special meetings may be called by the chairman and shall be called upon the written request of any three board members. Notice of all meetings shall be made in conformance with the Open Meetings Act.

D. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

E. The board shall:

(1) administer and enforce the provisions of the Podiatry Act;

(2) adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules for the implementation and enforcement of the provisions of the Podiatry Act;

(3) adopt and use a seal;

(4) conduct hearings, administer oaths and take testimony on any matters within the board's jurisdiction;

(5) keep an accurate record of its meetings, receipts and disbursements;

(6) keep a record of licensure examinations held, together with the names and addresses of persons taking the examinations and the examination results. Within forty-five days after any examination, the board shall give written notice to each applicant examined of the results of the examination as to the respective applicant;

(7) certify as passing each applicant who obtains a passing score, as defined by board rule, on examinations administered or approved by the board;

(8) keep records of registration in which the name, address and license number of licensed podiatrists are recorded, together with a record of license renewals, suspensions and revocations;

(9) grant, deny, renew, suspend or revoke licenses to practice podiatry or take other actions provided in Section 61-1-3 NMSA 1978 in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Podiatry Act;

(10) adopt and promulgate rules setting standards of preliminary and professional qualifications for the practice of podiatry;

(11) adopt and promulgate rules and prepare and administer examinations for the licensure and regulation of podiatric assistants as are necessary to protect the public. The rules shall include definitions and limitations on the practice of podiatric assistants, qualifications for applicants for licensure, an initial license fee in an amount not to exceed two hundred fifty dollars (\$250) and a renewal fee not to exceed one hundred dollars (\$100) per year, provisions for the regulation of podiatric assistants and provisions for the suspension or revocation of licenses;

(12) determine by rule all qualifications and requirements for applicants seeking licensure as podiatrists or podiatric assistants; and

(13) adopt rules and prepare and administer examinations for applicants seeking licensure as foot and ankle radiation technologists."

Section 9. Section 61-9-5 NMSA 1978 (being Laws 1989, Chapter 41, Section 5, as amended by Laws 1996, Chapter 51, Section 6 and also by Laws 1996, Chapter 54, Section 3) is amended to read:

"61-9-5. STATE BOARD OF EXAMINERS--PSYCHOLOGY FUND.--

A. There is created a "New Mexico state board of psychologist examiners". The board shall be administratively attached to the regulation and licensing department. The board shall consist of eight members appointed by the governor who are residents of New Mexico and who shall serve for three-year staggered terms. The members shall be appointed as follows:

(1) four members shall be professional members who are licensed under the Professional Psychologist Act as psychologists. The governor shall appoint the professional members from a list of names nominated by the New Mexico psychological association, the state psychologist association and the New Mexico school psychologist association;

(2) one member shall be licensed under the Professional Psychologist Act as a psychologist or psychologist associate; and

(3) three members shall be public members who are laymen and have no significant financial interest, direct or indirect, in the practice of psychology.

B. A member shall hold office until the expiration of his appointed term or until a successor is duly appointed. When the term of a member ends, the governor shall appoint his successor for a term of three years. A vacancy occurring in the board membership other than by expiration of term shall be filled by the governor by appointment for the unexpired term of the member. The governor may remove a board member for misconduct, incompetency or neglect of duty.

C. All money received by the board shall be credited to the "psychology fund". Money in the psychology fund at the end of the fiscal year shall not revert to the general fund and shall be used in accordance with the provisions of the Professional Psychologist Act. The members of the board may be reimbursed as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance."

Section 10. Section 61-9-6 NMSA 1978 (being Laws 1963, Chapter 92, Section 5, as amended by Laws 1996, Chapter 51, Section 7 and also by Laws 1996, Chapter 54, Section 4) is amended to read:

"61-9-6. BOARD--MEETING--POWERS.--

A. The board shall, annually in the month of July, hold a meeting and elect from its membership a chairman, vice chairman and secretary-treasurer. The board shall meet at other times as it deems necessary or advisable or as deemed necessary and advisable by the chairman or a majority of its members or the governor. Reasonable notice of all meetings shall be given in the manner prescribed by the board. A majority of the board constitutes a quorum at a meeting or hearing.

B. The board is authorized to:

(1) adopt and from time to time revise such rules and regulations not inconsistent with the law as may be necessary to carry into effect the provisions of the Professional Psychologist Act. The rules and regulations shall include a code of conduct for psychologists and psychologist associates in the state;

(2) adopt a seal, and the administrator shall have the care and custody of the seal;

(3) examine for, approve, deny, revoke, suspend and renew the licensure of psychologist and psychologist associate applicants as provided in the Professional Psychologist Act;

(4) conduct hearings upon complaints concerning the disciplining of a psychologist or psychologist associate; and

(5) cause the prosecution and enjoinder of persons violating the Professional Psychologist Act and incur necessary expenses therefor.

C. Within sixty days after the close of each fiscal year, the board shall submit a written report, reviewed and signed by the board members, to the governor concerning the work of the board during the preceding fiscal year. The report shall include the names of psychologists and psychologist associates to whom licenses have been granted; cases heard and decisions rendered in relation to the work of the board; the recommendations of the board as to future policies; and an account of all money received and expended by the board."

Section 11. Section 61-10-5 NMSA 1978 (being Laws 1933, Chapter 117, Section 4, as amended) is amended to read:

"61-10-5. BOARD OF EXAMINERS--APPOINTMENT--TERMS--MEETINGS--MEMBERSHIP--EXAMINATIONS.--

A. There is created the "board of osteopathic medical examiners". The board shall be administratively attached to the regulation and licensing department. The board consists of five members appointed by the governor; three members shall be regularly licensed osteopathic physicians in good standing in New Mexico, who have been so engaged for a period of at least two years immediately prior to their appointment and who are possessed of all the qualifications for applicants for licensure specified in Section 61-10-8 NMSA 1978, and two members shall represent the public. The public members of the board shall not have been licensed as osteopathic physicians, nor shall the public members have any significant financial interest, direct or indirect, in the occupation regulated.

B. Board members' terms shall be for five years. The vacancy of the term of a member shall be filled by appointment by the governor to the unexpired portion of the five-year term. A board member whose term has expired shall serve until his successor is appointed.

C. The board shall meet during the first quarter of the fiscal year and shall elect officers for the ensuing fiscal year. The board may hold other meetings as it deems necessary. A majority of the board constitutes a quorum.

D. The board shall have and use a common seal and is authorized to make and adopt all necessary rules and regulations relating to the enforcement of the provisions of Chapter 61, Article 10 NMSA 1978.

E. Examinations shall be made at least twice a year at the time and place fixed by the board. All applicants shall be given written notice of examinations at a reasonable prior date.

F. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance, for each day necessarily spent in the discharge of their duties.

G. A board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board."

Section 12. 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 shall be administratively attached to the regulation and licensing department. 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. 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. A 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 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, Tarrant 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, De Baca, 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. A board member shall not serve more than two full terms, consecutive or otherwise.

G. A board member failing to attend three consecutive regular meetings is automatically removed as a member of the board.

H. The governor may remove a member of the board for neglect of a duty required by law, for incompetency or for unprofessional conduct and shall remove a board member who violates a provision of the Pharmacy Act."

Section 13. Section 61-12A-8 NMSA 1978 (being Laws 1996, Chapter 55, Section 8) is amended to read:

"61-12A-8. BOARD CREATED.--

A. The "board of examiners for occupational therapy" is created.

B. The board shall be administratively attached to the regulation and licensing department.

C. The board shall consist of five members appointed by the governor who have been residents of the state for two years preceding the appointment.

D. Three members shall be licensed under the provisions of the Occupational Therapy Act; have a minimum of five years' professional experience, with two years' experience in New Mexico; and have not had their licenses suspended or revoked by this or any other state. One of the professional members may be a certified occupational therapy assistant; and one of the professional members may be a retired registered occupational therapist.

E. Two members shall represent the public. The two public members shall have no direct interest in the profession of occupational therapy. The public members shall not:

(1) have been convicted of a felony;

(2) be habitually intemperate or be addicted to the use of habit-forming drugs or be addicted to a vice to such a degree as to render him unfit to fulfill his board duties and responsibilities; or

(3) be guilty of a violation of the Controlled Substances Act.

F. Appointments shall be made for staggered terms of three years with no more than two terms ending at any one time. A board member shall not serve more than two consecutive terms. Vacancies shall be filled for the unexpired term by appointment by the governor prior to the next scheduled board meeting.

G. An individual member of the board shall not be liable in a civil or criminal action for an act performed in good faith in the execution of his duties as a member of the board.

H. Members of the board shall be reimbursed for per diem and travel expenses as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

I. A simple majority of the board members currently serving shall constitute a quorum of the board for the conduct of business.

J. The board shall meet at least four times a year and at other times as it deems necessary. Additional meetings may be convened at the call of the president of the board or on the written request of any two board members to the president. Meetings of the board shall be conducted in accordance with the provisions of the Open Meetings Act.

K. A member failing to attend three consecutive meetings, unless excused as provided by board policy, shall automatically be recommended for removal as a member of the board.

L. At the beginning of each fiscal year, the board shall elect a president, vice president and secretary-treasurer."

Section 14. Section 61-12A-9 NMSA 1978 (being Laws 1996, Chapter 55, Section 9) is amended to read:

"61-12A-9. BOARD--POWERS AND DUTIES.--

A. The board shall:

(1) adopt, file, amend or repeal rules and regulations in accordance with the Uniform Licensing Act to carry out the provisions of the Occupational Therapy Act;

(2) use funds for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Occupational Therapy Act;

(3) adopt a code of ethics;

(4) enforce the provisions of the Occupational Therapy Act to protect the public by conducting hearings on charges relating to the discipline of licensees, including the denial, suspension or revocation of a license;

(5) establish and collect fees;

(6) provide for examination for and issuance, renewal and reinstatement of licenses;

(7) establish, impose and collect fines for violations of the Occupational Therapy Act;

(8) appoint a registrar to keep records and minutes necessary to carry out the functions of the board; and

(9) obtain the legal assistance of the attorney general.

B. The board may:

(1) issue investigative subpoenas for the purpose of investigating complaints against licensees prior to the issuance of a notice of contemplated action;

(2) hire or contract with an investigator to investigate complaints that have been filed with the board. The board shall set the compensation of the investigator to be paid from the funds of the board;

(3) inspect establishments; and

(4) designate hearing officers."

Section 15. Section 61-12A-10 NMSA 1978 (being Laws 1996, Chapter 55, Section 10) is amended to read:

"61-12A-10. BOARD--ADMINISTRATIVE PROCEDURES.--The board shall appoint a registrar who is either the board member elected as the secretary-treasurer or

such other person as the board may designate who is an employee of the state. The registrar of the board may receive reimbursement for necessary expenses incurred in carrying out his duties. The registrar shall keep a written record in which shall be registered the name, license number, date of license issuance, current address, record of annual license fee payments, minutes and any other data as the board deems necessary regarding licensees."

Section 16. Section 61-12B-5 NMSA 1978 (being Laws 1984, Chapter 103, Section 5, as amended) is amended to read:

"61-12B-5. ADVISORY BOARD CREATED.--

A. The superintendent shall appoint an "advisory board of respiratory care practitioners" consisting of five members as follows:

(1) one physician licensed in New Mexico who is knowledgeable in respiratory care;

(2) two respiratory care practitioners who are residents of New Mexico, licensed by the department and in good standing. At least one of the respiratory care practitioners shall have been actively engaged in the practice of respiratory care for at least five years immediately preceding appointment or reappointment; and

(3) two public members who are residents of New Mexico. A public member shall not have been licensed as a respiratory care practitioner nor shall he have any financial interest, direct or indirect, in the occupation to be regulated.

B. The board shall be administratively attached to the department.

C. A member shall serve no more than two consecutive three-year terms.

D. A member of the board 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 in connection with the discharge of his duties as a board member.

E. A member failing to attend three consecutive regular and properly noticed meetings of the board without a reasonable excuse shall be automatically removed from the board.

F. In the event of a vacancy, the board shall immediately notify the superintendent of the vacancy. Within ninety days of receiving notice of a vacancy, the superintendent shall appoint a qualified person to fill the remainder of the unexpired term.

G. A majority of the board members currently serving constitutes a quorum of the board.

H. The board shall meet at least twice a year and at such other times as it deems necessary.

I. The board shall annually elect officers as deemed necessary to administer its duties."

Section 17. Section 61-12D-4 NMSA 1978 (being Laws 1997, Chapter 89, Section 4) is amended to read:

"61-12D-4. BOARD CREATED.--

A. The "physical therapy board" is created. The board shall be administratively attached to the regulation and licensing department. 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. Appointments shall be made for staggered terms of three years with no more than two terms ending at any one time. A member shall not 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 a 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 18. Section 61-12D-5 NMSA 1978 (being Laws 1997, Chapter 89, Section 5) is amended to read:

"61-12D-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 it 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 establish ad hoc committees and pay per diem and mileage to the members;

J. may enter into contracts;

K. shall report final disciplinary action taken against a physical therapist or physical therapist assistant to the national disciplinary database;

L. shall publish at least annually final disciplinary action taken against any physical therapist or physical therapist assistant; and

M. 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 19. 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". The board shall be administratively attached to the regulation and licensing department. The board

shall consist 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 a state or other public agency."

Section 20. Section 61-13-6 NMSA 1978 (being Laws 1970, Chapter 61, Section 5, as amended) is amended to read:

"61-13-6. DUTIES OF THE BOARD.--It is the duty of the board to:

A. formulate, adopt and regularly revise such rules and regulations not inconsistent with law as may be necessary to adopt and enforce standards for licensing nursing home administrators and to carry into effect the provisions of the Nursing Home Administrators Act;

B. approve for licensure applicants for:

(1) initial licensure;

(2) annual renewal of current, active licenses;

(3) reciprocity;

(4) reinstatement of revoked or suspended licenses; and

(5) reactivation of inactive or expired licenses;

C. cause the prosecution or enjoinder of all persons violating the Nursing Home Administrators Act and deny, suspend or revoke licenses in accordance with the provisions of the Uniform Licensing Act;

D. submit a written annual report to the governor and the legislature detailing the actions of the board and including an accounting of all money received and expended by the board; and

E. maintain a register of licensees and a record of all applicants for licensure received by the board."

Section 21. Section 61-14A-8 NMSA 1978 (being Laws 1993, Chapter 158, Section 16, as amended) is amended to read:

"61-14A-8. BOARD--POWERS.--The board has the power to:

A. enforce the provisions of the Acupuncture and Oriental Medicine Practice Act;

B. adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules necessary for the implementation and enforcement of the provisions of the Acupuncture and Oriental Medicine Practice Act;

C. adopt a code of ethics;

D. adopt and use a seal;

E. inspect facilities of approved educational programs, extern programs and the offices of licensees;

F. adopt rules implementing continuing education requirements for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness;

G. issue investigative subpoenas for the purpose of investigating complaints against licensees prior to the issuance of a notice of contemplated action;

H. administer oaths and take testimony on any matters within the board's jurisdiction;

I. conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license in accordance with the Uniform Licensing Act; and

J. grant, deny, renew, suspend or revoke licenses to practice acupuncture and oriental medicine or grant, deny, renew, suspend or revoke approvals of educational programs and extern programs in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Acupuncture and Oriental Medicine Practice Act or the rules of the board."

Section 22. Section 61-14B-11 NMSA 1978 (being Laws 1996, Chapter 57, Section 11) is amended to read:

"61-14B-11. BOARD POWERS AND DUTIES.--The board shall:

A. adopt rules and regulations and establish policy necessary to carry out the provisions of the Speech Language Pathology, Audiology and Hearing Aid Dispensing Practices Act in accordance with the Uniform Licensing Act;

B. adopt rules implementing continuing education requirements;

C. adopt a code of ethics;

D. conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license in accordance with the Uniform Licensing Act;

E. investigate complaints against licensees by issuing investigative subpoenas prior to the issuance of a notice of contemplated action;

F. establish fees for licensure;

G. provide for the licensing and renewal of licenses of applicants; and

H. adopt rules that provide for licensure by reciprocity, including temporary permits for speech language pathologists, audiologists or hearing aid dispensers."

Section 23. Section 61-17A-7 NMSA 1978 (being Laws 1993, Chapter 171, Section 7, as amended) 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 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 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, manicurists-pedicurists, estheticians, electrologists, instructors, schools, enterprises and establishments;

(9) establish administrative penalties and fines;

(10) create and establish standards and fees for special licenses;
and

(11) establish guidelines for schools to calculate tuition refunds for withdrawing students.

B. The board may establish continuing education requirements as requirements for licensure.

C. A member of the board, its employees or agents may enter and inspect a school, enterprise or establishment at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act."

Section 24. Section 61-24B-6 NMSA 1978 (being Laws 1985, Chapter 151, Section 6, as amended) is amended to read:

"61-24B-6. BOARD CREATED--MEMBERS--QUALIFICATIONS--TERMS--VACANCIES--REMOVAL.--

A. The "board of landscape architects" is created. The board is administratively attached to the regulation and licensing department. The board shall consist of five members, three of whom shall be landscape architects. The landscape architect members shall have been registered as landscape architects for at least five years. The two public members shall represent the public and shall not have been licensed as landscape architects or have any significant financial interest, direct or indirect, in the occupation regulated.

B. The members of the board shall be appointed by the governor for staggered terms of three years, and appointments shall be made in a manner that the terms of board members expire on June 30. The landscape architect members of the board shall be appointed from lists submitted to the governor by the New Mexico chapter of the American society of landscape architects. A vacancy shall be filled by appointment by the governor for the unexpired term and shall be filled by persons having similar qualifications to those of the member being replaced. Board members shall serve until their successors have been appointed and qualified.

C. The board shall meet within sixty days of the beginning of a fiscal year and elect from its membership a chairman and vice chairman. The board shall meet at other times as it deems necessary or advisable or as deemed necessary and advisable by the chairman or a majority of its members or the governor, but in no event less than twice a year. Reasonable notice of all meetings shall be given in the manner prescribed by the board. A majority of the board shall constitute a quorum at any meeting or hearing.

D. The governor may remove a member from the board for neglect of a duty required by law, for incompetence, for improper or unprofessional conduct as defined by board rule or for any reason that would justify the suspension or revocation of his registration to practice landscape architecture.

E. A board member shall not serve more than two consecutive full terms, and a member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member, unless excused for reasons set forth in board rules.

F. 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 25. Section 61-24B-7 NMSA 1978 (being Laws 1985, Chapter 151, Section 7, as amended) is amended to read:

"61-24B-7. BOARD--POWERS AND DUTIES.--The board shall:

A. promulgate rules necessary to effectuate the provisions of the Landscape Architects Act;

B. provide for the examination, registration and re-registration of applicants;

C. adopt and use a seal;

D. administer oaths and take testimony on matters within the board's jurisdiction;

E. grant, deny, renew, suspend or revoke certificates of registration to practice landscape architecture in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Landscape Architects Act;

F. conduct hearings upon charges relating to discipline of a registrant or the denial, suspension or revocation of a certificate of registration; and

G. in cooperation with the state board of examiners for architects and the state board of licensure for professional engineers and surveyors, create a joint

standing committee to be known as the "joint practice committee" to safeguard life, health and property and to promote the public welfare. The committee shall promote and develop the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of this committee and its powers and duties shall be in accordance with identical resolutions adopted by each board."

Section 26. Section 61-24C-4 NMSA 1978 (being Laws 1989, Chapter 53, Section 4, as amended) is amended to read:

"61-24C-4. INTERIOR DESIGN BOARD CREATED--MEMBERS--TERMS--COMPENSATION.--

A. There is created the "interior design board". The board shall be administratively attached to the regulation and licensing department. The board shall consist of five members appointed by the governor for staggered terms of three years, appointed in a manner that the term of one member shall expire on December 31, 1990; the terms of two members shall expire on December 31, 1991; and the terms of the last two members shall expire on December 31, 1992. Thereafter, members shall be appointed for terms of three years or less in a manner that the terms of not more than two members expire on December 31 of each year. A vacancy shall be filled by appointment by the governor for the unexpired term. A board member shall not serve consecutive terms.

B. Two members of the board shall be licensed interior designers and three members shall be chosen to represent the public and shall not have been licensed as interior designers or have a significant financial interest, direct or indirect, in the occupation regulated. For purposes of this section, the interior designer members of the initial board shall have offered interior design services for at least five years, shall have passed the national council for interior design qualification examination and shall have become registered by November 1, 1989.

C. Three members of the board shall constitute a quorum for the transaction of business, but no final action shall be taken unless at least three members vote in favor of a proposal."

Section 27. Section 61-24C-5 NMSA 1978 (being Laws 1989, Chapter 53, Section 5 as amended) is amended to read:

"61-24C-5. POWERS AND DUTIES OF THE BOARD.--The board:

A. shall administer, coordinate and enforce the provisions of the Interior Designers Act. The board may investigate allegations of violations of the provisions of the Interior Designers Act;

B. shall adopt regulations to carry out the purposes and policies of the Interior Designers Act, including regulations relating to professional conduct, standards of performance and professional examination and licensure, reasonable license, application, renewal and late fees and the establishment of ethical standards of practice for persons holding a license to practice as an interior designer in New Mexico;

C. shall require a licensee, as a condition of the renewal of his license, to undergo continuing education requirements as set forth in the Interior Designers Act;

D. shall maintain an official roster showing the name, address and license number of each interior designer licensed pursuant to the Interior Designers Act;

E. shall conduct hearings and keep records and minutes necessary to carry out its functions;

F. may adopt a common seal for use by interior designers; and

G. shall do all things reasonable and necessary to carry out the purposes of the Interior Designers Act."

Section 28. Section 61-28B-4 NMSA 1978 (being Laws 1999, Chapter 179, Section 4) is amended to read:

"61-28B-4. BOARD CREATED--TERMS--OFFICERS--MEETINGS--REIMBURSEMENT.--

A. The "New Mexico public accountancy board" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist of seven members appointed by the governor who are citizens of the United States and residents of New Mexico. Four members of the board shall be certified public accountants or registered public accountants who have practiced for at least five calendar years immediately preceding their appointment to the board. Three members shall represent the public and shall not have ever held a certificate or permit to practice public accountancy in any state and shall not have ever had a significant financial interest, direct or indirect, in the public accountancy profession or in a firm. Public members shall have professional or practical experience in the use of accounting services and financial statements, so as to be qualified to make judgments about the qualifications and conduct of persons subject to the provisions of the 1999 Public Accountancy Act.

B. Members of the board shall serve for terms of three years or less, staggered in a manner that the terms of not more than three members expire on January 1 of each year; provided that members appointed and serving pursuant to prior law on the effective date of the 1999 Public Accountancy Act shall serve the remainder of their terms. A vacancy on the board shall be filled by appointment by the governor for the unexpired term. Upon the expiration of a member's term of office, he shall continue

to serve until his successor has been appointed and qualified. A professional member of the board whose certificate is suspended or revoked shall automatically cease to be a member of the board. The governor may remove a member of the board for neglect of duty or other just cause.

C. The board shall elect annually from among its members a chairman and other officers as the board determines. The board shall meet at times and places as fixed by the board. A majority of the board constitutes a quorum.

D. Members of the board may receive per diem and travel expenses as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance."

Section 29. Section 61-28B-5 NMSA 1978 (being Laws 1999, Chapter 179, Section 5) is amended to read:

"61-28B-5. BOARD--POWERS AND DUTIES.--

A. The board may:

(1) appoint committees or persons to advise or assist it in carrying out the provisions of the 1999 Public Accountancy Act;

(2) retain its own counsel to advise and assist it in addition to advice and assistance provided by the attorney general;

(3) contract, sue and be sued and have and use a seal;

(4) cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of the 1999 Public Accountancy Act and comparable acts of other states; and

(5) adopt and file in accordance with the Uniform Licensing Act and the State Rules Act rules to carry out the provisions of the 1999 Public Accountancy Act, including rules governing the administration and enforcement of the 1999 Public Accountancy Act and the conduct of certificate and permit holders.

B. The board shall maintain a registry of the names and addresses of certificate and permit holders."

Section 30. Section 61-29-4 NMSA 1978 (being Laws 1959, Chapter 226, Section 3, as amended) is amended to read:

"61-29-4. CREATION OF COMMISSION--POWERS AND DUTIES.--There is created the "New Mexico real estate commission". The commission shall be appointed

by the governor and shall consist of five members who shall have been residents of the state for three consecutive years immediately prior to their appointment, four of whom shall have been real estate brokers licensed in New Mexico and one of whom shall be a member of the public who has never been licensed as a real estate broker or salesperson; provided not more than one member shall be from any one county within the state. The members of the commission shall serve for a period of five years or until their successors are appointed and qualified. Members to fill vacancies shall be appointed for an unexpired term. The governor may remove a member for cause. The commission shall possess all the powers and perform all the duties prescribed by Chapter 61, Article 29 NMSA 1978 and as otherwise provided by law, and it is expressly vested with power and authority to make and enforce rules and regulations to carry out the provisions of that article. Prior to a final action on a proposed change or amendment to the rules and regulations of the commission, the commission may publish notice of the proposed action in its official publication, distribute the publication to each active licensee and give the time and place for a public hearing on the proposed changes. The hearing shall be held at least thirty days prior to a proposed final action. Changes or amendments to the rules shall be filed in accordance with the procedures of the State Rules Act and shall become effective thirty days after notification to all active licensees of the filing of the changes or amendments."

Section 31. Section 61-29-7 NMSA 1978 (being Laws 1959, Chapter 226, Section 6, as amended) is amended to read:

"61-29-7. REIMBURSEMENT AND EXPENSES.--Each member of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 32. Section 61-30-5 NMSA 1978 (being Laws 1990, Chapter 75, Section 5, as amended) is amended to read:

"61-30-5. REAL ESTATE APPRAISERS BOARD CREATED.--

A. There is created a "real estate appraisers board" consisting of seven members. The board shall be administratively attached to the regulation and licensing department.

B. There shall be four real estate appraiser members of the board who shall be licensed or certified. Membership in a professional appraisal organization or association shall not be a prerequisite to serve on the board. No more than two real estate appraiser members shall be from any one licensed or certified category.

C. Board members shall be appointed to five-year terms and shall serve until their successor is appointed and qualified. Real estate appraiser members may be appointed for no more than two five-year terms.

D. No more than two members shall be from any one county within New Mexico, and at least one real estate appraiser member shall be from each congressional district.

E. One member of the board shall represent lenders or their assignees engaged in the business of lending funds secured by mortgages. Two members shall be appointed to represent the public. The public members shall not have been real estate appraisers or engaged in the business of real estate appraisals or have any financial interest, direct or indirect, in real estate appraisal or any real-estate-related business.

F. Vacancies on the board shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy."

Section 33. Section 61-30-9 NMSA 1978 (being Laws 1990, Chapter 75, Section 9, as amended) is amended to read:

"61-30-9. REIMBURSEMENT AND EXPENSES.--The board may appoint such committees of the board as may be necessary. A member of the board or a committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance. Compensation for any necessary supplies and equipment shall be paid from the appraiser fund."

Section 34. Section 61-31-8 NMSA 1978 (being Laws 1989, Chapter 51, Section 8) is amended to read:

"61-31-8. BOARD'S AUTHORITY.--In addition to any authority provided by law, the board shall have the authority to:

A. adopt and file, in accordance with the State Rules Act, rules and regulations necessary to carry out the provisions of the Social Work Practice Act, in accordance with the provisions of the Uniform Licensing Act, including the procedures for an appeal of an examination failure;

B. select, prepare and administer, at least annually, written examinations for licensure that shall include a testing of the knowledge of New Mexico cultures;

C. adopt a professional code of ethics;

D. appoint advisory committees pursuant to Section 61-31-19 NMSA 1978;

E. conduct hearings on an appeal of a denial of a license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to the Uniform Licensing Act;

F. require and establish criteria for continuing education;

G. issue subpoenas, statements of charges, statements of intent to deny licenses and orders and delegate in writing to a designee the authority to issue subpoenas, statements of charges and statements of intent to deny licenses and establish procedures for receiving, investigating and conducting hearings on complaints;

H. approve appropriate supervision for those persons seeking licensure as independent social workers;

I. issue provisional licenses and licenses based on credentials to persons meeting the requirements set forth in the Social Work Practice Act;

J. determine qualifications for licensure;

K. set fees for licenses as authorized by the Social Work Practice Act and authorize all disbursements necessary to carry out the provisions of the Social Work Practice Act; and

L. keep a record of all proceedings and shall make an annual report to the governor."

Section 35. REPEAL.--Section 60-2A-5 NMSA 1978 (being Laws 1980, Chapter 90, Section 5) is repealed.

Section 36. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 101, AS AMENDED

CHAPTER 409

CHAPTER 409, LAWS 2003

AN ACT

RELATING TO PROFESSIONAL LICENSING; AMENDING AND ENACTING SECTIONS OF THE DENTAL HEALTH CARE ACT; AMENDING A SECTION OF THE IMPAIRED DENTISTS AND DENTAL HYGIENISTS ACT; CLARIFYING DEFINITIONS; AMENDING LICENSURE PROVISIONS; AMENDING THE NEW MEXICO BOARD OF DENTAL HEALTH CARE'S RULEMAKING AUTHORITY; EXTENDING THE SUNSET DATE OF THE NEW MEXICO BOARD OF DENTAL HEALTH CARE.

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

Section 1. Section 61-5A-2 NMSA 1978 (being Laws 1994, Chapter 55, Section 2) is amended to read:

"61-5A-2. PURPOSE.--

A. In the interest of the public health, safety and welfare and to protect the public from the improper, unprofessional, incompetent and unlawful practice of dentistry and dental hygiene, it is necessary to provide laws and rules controlling the granting and use of the privilege to practice dentistry and dental hygiene and to establish a board of dental health care and a dental hygienists committee to implement and enforce those laws and rules.

B. The primary duties of the New Mexico board of dental health care are to issue licenses to qualified dentists and owners of dental practices, to certify qualified dental assistants, to issue licenses to dental hygienists through the dental hygienists committee, to discipline incompetent or unprofessional dentists, dental assistants, owners of dental practices and, through the dental hygienists committee, dental hygienists and to aid in the rehabilitation of impaired dentists and dental hygienists for the purpose of protecting the public."

Section 2. Section 61-5A-3 NMSA 1978 (being Laws 1994, Chapter 55, Section 3) is amended to read:

"61-5A-3. DEFINITIONS.--As used in the Dental Health Care Act:

A. "assessment" means the review and documentation of the oral condition and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment;

B. "board" means the New Mexico board of dental health care;

C. "certified dental assistant" means an individual certified by the dental assistant national board;

D. "collaborative dental hygiene practice" means a New Mexico licensed dental hygienist practicing according to Subsections D and E of Section 61-5A-4 NMSA 1978;

E. "committee" means the New Mexico dental hygienists committee;

F. "consulting dentist" means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental

hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee;

G. "dental assistant certified in expanded functions" means a dental assistant who meets specific qualifications set forth by rule of the board;

H. "dental hygienist" means an individual who has graduated and received a degree from a dental hygiene educational program accredited by the joint commission on dental accreditation, which provides a minimum of two academic years of dental hygiene curriculum and is an institution of higher education and, except as the context otherwise requires, who holds a license to practice dental hygiene in New Mexico;

I. "dental laboratory" means any place where dental restorative, prosthetic, cosmetic and therapeutic devices or orthodontic appliances are fabricated, altered or repaired by one or more persons under the orders and authorization of a dentist;

J. "dental technician" means an individual, other than a licensed dentist, who fabricates, alters, repairs or assists in the fabrication, alteration or repair of dental restorative, prosthetic, cosmetic and therapeutic devices or orthodontic appliances under the orders and authorization of a dentist;

K. "dentist" means an individual who has graduated and received a degree from a school of dentistry that is accredited by the joint commission on dental accreditation and, except as the context otherwise requires, who holds a license to practice dentistry in New Mexico;

L. "general supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by rule of the board;

M. "indirect supervision" means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student; and

N. "non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services."

Section 3. Section 61-5A-4 NMSA 1978 (being Laws 1994, Chapter 55, Section 4, as amended) is amended to read:

"61-5A-4. SCOPE OF PRACTICE.--

A. As used in the Dental Health Care Act, "practice of dentistry" means:

(1) the diagnosis, treatment, correction, change, relief, prevention, prescription of remedy, surgical operation and adjunctive treatment for any disease, pain, deformity, deficiency, injury, defect, lesion or physical condition involving both the functional and aesthetic aspects of the teeth, gingivae, jaws and adjacent hard and soft tissue of the oral and maxillofacial regions, including the prescription or administration of any drug, medicine, biologic, apparatus, brace, anesthetic or other therapeutic or diagnostic substance or technique by an individual or his agent or employee gratuitously or for any fee, reward, emolument or any other form of compensation whether direct or indirect;

(2) representation of an ability or willingness to do any act mentioned in Paragraph (1) of this subsection;

(3) the review of dental insurance claims for therapeutic appropriateness of treatment, including but not limited to the interpretation of radiographs, photographs, models, periodontal records and narratives;

(4) the offering of advice or authoritative comment regarding the appropriateness of dental therapies, the need for recommended treatment or the efficacy of specific treatment modalities for other than the purpose of consultation to another dentist; or

(5) with specific reference to the teeth, gingivae, jaws or adjacent hard or soft tissues of the oral and maxillofacial region in living persons, to propose, agree or attempt to do or make an examination or give an estimate of cost with intent to, or undertaking to:

(a) perform a physical evaluation of a patient in an office or in a hospital, clinic or other medical or dental facility prior to, incident to and appropriate to the performance of any dental services or oral or maxillofacial surgery;

(b) perform surgery, an extraction or any other operation or to administer an anesthetic in connection therewith;

(c) diagnose or treat any condition, disease, pain, deformity, deficiency, injury, lesion or other physical condition;

(d) correct a malposition;

(e) treat a fracture;

(f) remove calcareous deposits;

(g) replace missing anatomy with an artificial substitute;

(h) construct, make, furnish, supply, reproduce, alter or repair an artificial substitute or restorative or corrective appliance or place an artificial substitute or restorative or corrective appliance in the mouth or attempt to adjust it;

(i) give interpretations or readings of dental radiographs; or

(j) do any other remedial, corrective or restorative work.

B. As used in the Dental Health Care Act, "the practice of dental hygiene" means the application of the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services under the general supervision of a dentist. "Dental hygiene" includes:

(1) prophylaxis, which is the treatment of human teeth by removing from their surface calcareous deposits and stain, removing accumulated accretions and polishing the surfaces of the teeth;

(2) removing diseased crevicular tissue;

(3) the application of pit and fissure sealants without mechanical alteration of the tooth, fluorides and other topical therapeutic and preventive agents;

(4) exposing and referring to oral radiographs;

(5) screening to identify indications of oral abnormalities;

(6) assessment of periodontal conditions; and

(7) such other closely related services as permitted by the rules of the committee and the board.

C. In addition to performing dental hygiene as defined in Subsection B of this section, dental hygienists who have met such criteria as the committee shall establish and the board ratify may administer local anesthesia under indirect supervision of a dentist.

D. A New Mexico licensed dental hygienist may be certified for collaborative dental hygiene practice in accordance with the educational and experience criteria established collaboratively by the committee and the board.

E. For the purpose of this section, "collaborative dental hygiene practice" means the application of the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services as specified in Subsection B of this section in a cooperative

working relationship with a consulting dentist, but without general supervision as set forth by the rules established and approved by both the board and the committee."

Section 4. Section 61-5A-5 NMSA 1978 (being Laws 1994, Chapter 55, Section 5) is amended to read:

"61-5A-5. LICENSE REQUIRED--EXEMPTIONS.--

A. Unless licensed to practice as a dentist under the Dental Health Care Act, no person shall:

(1) practice dentistry;

(2) use the title "dentist", "dental surgeon", "oral surgeon" or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dentist; or

(3) perform any of the acts enumerated under the definition of the practice of dentistry as defined in the Dental Health Care Act.

B. The following, under the stipulations described, may practice dentistry or an area of dentistry without a New Mexico dental license:

(1) regularly licensed physicians or surgeons are not prohibited from extracting teeth or treating any disease coming within the province of the practice of medicine;

(2) New Mexico licensed dental hygienists may provide those services within their scope of practice that are also within the scope of the practice of dentistry;

(3) any dental student duly enrolled in an accredited school of dentistry recognized by the board, while engaged in educational programs offered by the school in private offices, public clinics or educational institutions within the state of New Mexico under the indirect supervision of a licensed dentist;

(4) any dental hygiene or dental assisting student duly enrolled in an accredited school of dental hygiene or dental assisting engaged in procedures within or outside the scope of dental hygiene that are part of the curriculum of that program in the school setting and under the indirect supervision of a faculty member of the accredited program who is a licensed dentist, dental hygienist or dental assistant certified in the procedures being taught;

(5) unlicensed persons performing for a licensed dentist merely mechanical work upon inert matter in the construction, making, alteration or repairing of any artificial dental substitute, dental restorative or corrective appliance, when the casts

or impressions for the work have been furnished by a licensed dentist and where the work is prescribed by a dentist pursuant to a written authorization by that dentist;

(6) commissioned dental officers of the uniformed forces of the United States and dentists providing services to the United States public health service, the veterans' administration of the United States or within federally controlled facilities in the discharge of their official duties provided that such persons who hold dental licenses in New Mexico shall be subject to the provisions of the Dental Health Care Act; and

(7) dental assistants performing adjunctive services to the provision of dental care, under the indirect supervision of a dentist, as determined by rule of the board if such services are not within the practice of dental hygiene as specifically listed in Subsection B of Section 61-5A-4 NMSA 1978, unless allowed in Subsection E of this section.

C. Unless licensed to practice as a dental hygienist under the Dental Health Care Act, no person shall:

(1) practice as a dental hygienist;

(2) use the title "dental hygienist" or abbreviation "R.D.H." or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dental hygienist; or

(3) perform any of the acts defined as the practice of dental hygiene in the Dental Health Care Act.

D. The following, under the stipulations described, may practice dental hygiene or the area of dental hygiene outlined without a New Mexico dental hygiene license:

(1) students enrolled in an accredited dental hygiene program engaged in procedures that are part of the curriculum of that program and under the indirect supervision of a licensed faculty member of the accredited program;

(2) dental assistants working under general supervision who:

(a) expose dental radiographs after being certified in expanded functions by the board;

(b) perform rubber cup coronal polishing, which is not represented as a prophylaxis, having satisfied the educational requirements as established by rules of the board;

(c) apply fluorides as established by rules of the board; and

(d) perform those other dental hygienist functions as recommended to the board by the committee and set forth by rule of the board; and

(3) dental assistants certified in expanded functions, working under the indirect supervision of a dental hygienist certified for collaborative practice and under the protocols established in a collaborative practice agreement with a consulting dentist.

E. Dental assistants working under the indirect supervision of a dentist and in accordance with the rules and regulations established by the board may:

(1) expose dental radiographs;

(2) perform rubber cup coronal polishing that is not represented as a prophylaxis;

(3) apply fluoride and pit and fissure sealants without mechanical alteration of the tooth;

(4) perform those other dental hygienist functions as recommended to the board by the committee and set forth by rule of the board; and

(5) perform such other related functions that are not expressly prohibited by statute or rules of the board.

F. Unless licensed as a dentist or non-dentist owner, or as otherwise exempt from the licensing requirements of the Dental Health Care Act, no individual or corporate entity shall:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

G. The following, under stipulations described, may function as a non-dentist owner without a New Mexico license:

(1) government agencies providing dental services within affiliated facilities;

(2) government agencies engaged in providing public health measures to prevent dental disease;

(3) spouses of deceased licensed dentists or dental hygienists for a period of one year following the death of the licensee;

(4) accredited schools of dentistry, dental hygiene and dental assisting providing dental services solely in an educational setting;

(5) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;

(6) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;

(7) nonprofit community-based entities and organizations that use public funds to provide dental and dental hygiene services for indigent persons; and

(8) hospitals licensed by the department of health."

Section 5. Section 61-5A-7 NMSA 1978 (being Laws 1994, Chapter 55, Section 7) is amended to read:

"61-5A-7. DENTAL AND DENTAL HYGIENE DISTRICTS

CREATED.--For the purpose of selecting members of the board and the committee, there are created five districts composed of the following counties:

A. district I: San Juan, Rio Arriba, Taos, Sandoval, McKinley and Cibola;

B. district II: Colfax, Union, Mora, Harding, San Miguel, Quay, Guadalupe, Santa Fe and Los Alamos;

C. district III: Bernalillo, Valencia and Torrance;

D. district IV: Catron, Socorro, Grant, Sierra, Hidalgo, Luna, Dona Ana and Otero; and

E. district V: Lincoln, De Baca, Roosevelt, Chaves, Eddy, Curry and Lea."

Section 6. Section 61-5A-8 NMSA 1978 (being Laws 1994, Chapter 55, Section 8) is amended to read:

"61-5A-8. BOARD CREATED.--

A. There is created the nine-member "New Mexico board of dental health care". The board shall consist of five dentists, two dental hygienists and two public members. The dentists shall be actively practicing and have been licensed practitioners

and residents of New Mexico for a period of five years preceding the date of appointment. The dental hygienist members shall be members of the committee and shall be elected annually to sit on the board by those sitting on the committee. The appointed public members shall be residents of New Mexico and shall have no financial interest, direct or indirect, in the professions regulated in the Dental Health Care Act.

B. The governor may appoint the dentist members from a list of names submitted by the New Mexico dental association. There shall be one member from each district. All board members shall serve until their successors have been appointed. No more than one member may be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dentists and public members shall be for terms of five years. Dentists' appointments shall be made so that the term of one dentist member expires on July 1 of each year. Public members' five-year terms begin at the date of appointment.

D. Any board member failing to attend three board or committee meetings, either regular or special, during the board member's term shall automatically be removed as a member of the board unless excused from attendance by the board for good cause shown. Members of the board not sitting on the committee shall not be required or allowed to attend committee disciplinary hearings.

E. No board member shall serve more than two full terms on any state-chartered board whose responsibility includes the regulation of practice or licensure of dentistry or dental hygiene in New Mexico. A partial term of three or more years shall be considered a full term.

F. In the event of any vacancy, the secretary of the board shall immediately notify the governor, the board and committee members and the New Mexico dental association of the reason for its occurrence and action taken by the board, so as to expedite appointment of a new board member.

G. The board shall meet at least four times every year and no more than two meetings shall be public rules hearings. Regular meetings shall not be more than one hundred twenty days apart. The board may also hold special meetings and emergency meetings in accordance with rules of the board upon written notice to all members of the board and the committee.

H. 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; however, the secretary-treasurer may be compensated at the discretion of the board.

I. A simple majority of the board members currently serving shall constitute a quorum, provided at least two of that quorum are not dentist members and three are dentist members.

J. The board shall elect officers annually as deemed necessary to administer its duties and as provided in its rules."

Section 7. Section 61-5A-9 NMSA 1978 (being Laws 1994, Chapter 55, Section 9) is amended to read:

"61-5A-9. COMMITTEE CREATED.--

A. There is created the nine-member "New Mexico dental hygienists committee". The committee shall consist of five dental hygienists, two dentists and two public members. The dental hygienists shall be actively practicing and have been licensed practitioners and residents of New Mexico for a period of five years preceding the date of their appointment. The dentists and public members shall be members of the board and shall be elected annually to sit on the committee by those members sitting on the board.

B. The governor may appoint the dental hygienists from a list of names submitted by the New Mexico dental hygienists' association. There shall be one member from each district. All members shall serve until their successors have been appointed. No more than one member may be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dental hygienist members shall be for terms of five years. Appointments shall be made so that the term of one dental hygienist expires on July 1 of each year.

D. Any committee member failing to attend three committee or board meetings, either regular or special, during the committee member's term shall automatically be removed as a member of the committee unless excused from attendance by the committee for good cause shown. Members of the committee not sitting on the board shall not be required or allowed to attend board disciplinary hearings.

E. No committee member shall serve more than two full terms on any state-chartered board whose responsibility includes the regulation of practice or licensure of dentistry or dental hygiene in New Mexico. A partial term of three or more years shall be considered a full term.

F. In the event of any vacancy, the secretary of the committee shall immediately notify the governor, the committee and board members and the New Mexico dental hygienists' association of the reason for its occurrence and action taken by the committee, so as to expedite appointment of a new committee member.

G. The committee shall meet at least four times every year and no more than two meetings shall be public rules hearings. Regular meetings shall not be more than one hundred twenty days apart. The committee may also hold special meetings

and emergency meetings in accordance with the rules of the board and committee, upon written notification to all members of the committee and the board.

H. Members of the committee shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

I. A simple majority of the committee members currently serving shall constitute a quorum, provided at least two of that quorum are not hygienist members and three are hygienist members.

J. The committee shall elect officers annually as deemed necessary to administer its duties and as provided in rules and regulations of the board and committee."

Section 8. Section 61-5A-10 NMSA 1978 (being Laws 1994, Chapter 55, Section 10) is amended to read:

"61-5A-10. POWERS AND DUTIES OF THE BOARD AND COMMITTEE.--In addition to any other authority provided by law, the board or the committee shall have the power to:

A. enforce and administer the provisions of the Dental Health Care Act;

B. adopt, publish, file and revise, in accordance with the Uniform Licensing Act and the State Rules Act, all rules as may be necessary to:

(1) regulate the examination and licensure of dentists and, through the committee, regulate the examination and licensure of dental hygienists;

(2) provide for the examination and certification of dental assistants by the board;

(3) provide for the regulation of dental technicians by the board;

(4) regulate the practice of dentistry, dental assisting and, through the committee, regulate the practice of dental hygiene; and

(5) provide for the regulation and licensure of non-dentist owners by the board;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board or the committee, as appropriate;

E. keep an accurate record of all meetings, receipts and disbursements;

F. grant, deny, review, suspend and revoke licenses and certificates to practice dentistry, dental assisting and, through the committee, dental hygiene and censure, reprimand, fine and place on probation and stipulation dentists, dental assistants and, through the committee, dental hygienists, in accordance with the Uniform Licensing Act for any cause stated in the Dental Health Care Act;

G. grant, deny, review, suspend and revoke licenses to own dental practices and censure, reprimand, fine and place on probation and stipulation non-dentist owners, in accordance with the Uniform Licensing Act, for any cause stated in the Dental Health Care Act;

H. maintain records of the name, address, license number and such other demographic data as may serve the needs of the board of all licensees, together with a record of all license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines. The board shall make available composite reports of demographic data, but shall limit public access to information regarding individuals to their names, addresses, license numbers and license actions or as required by statute;

I. hire staff and administrators as necessary to carry out the provisions of the Dental Health Care Act;

J. establish ad hoc committees whose members shall be appointed by the chairman with the advice and consent of the board or committee and shall include at least one member of the board or committee, as it deems necessary for carrying on its business;

K. have the authority to pay per diem and mileage to individuals who are appointed by the board or the committee to serve on ad hoc committees;

L. have the authority to hire or contract with investigators to investigate possible violations of the Dental Health Care Act;

M. have the authority to hire an attorney to give advice and counsel in regard to any matter connected with the duties of the board or the committee, to represent the board or the committee in any legal proceedings and to aid in the enforcement of the laws in relation to the Dental Health Care Act and to fix the compensation to be paid to such attorney; provided, however, such attorney shall be compensated from the funds of the board;

N. have the authority to issue investigative subpoenas prior to the issuance of a notice of contemplated action for the purpose of investigating complaints against dentists, dental assistants and, through the committee, dental hygienists licensed under the Dental Health Care Act; and

O. establish continuing education or continued competency requirements for dentists, certified dental assistants in expanded functions, dental technicians and, through the committee, dental hygienists."

Section 9. Section 61-5A-12 NMSA 1978 (being Laws 1994, Chapter 55, Section 12, as amended) is amended to read:

"61-5A-12. DENTISTS--REQUIREMENTS FOR LICENSURE--SPECIALTY LICENSE.--

A. All applicants for licensure as a dentist shall have graduated and received a degree from a school of dentistry that is accredited by the joint commission on dental accreditation and have passed the written portion of the dental examination administered by the joint commission on national dental examinations of the American dental association or, if the test is not available, another written examination determined by the board.

B. Applicants for a general license to practice dentistry by examination shall be required, in addition to the requirements set forth in Subsection A of this section, to pass a test covering the laws and rules for the practice of dentistry in New Mexico. Written examinations shall be supplemented by the board or its agents by administering to each applicant a practical or clinical examination that reasonably tests the applicant's qualifications to practice general dentistry. Upon an applicant passing the written and clinical examinations and payment in advance of the necessary fees, the board shall issue a license to practice dentistry.

C. The board may issue a general license to practice dentistry, by credentials, without a practical or clinical examination to an applicant who is duly licensed by a clinical examination as a dentist under the laws of another state or territory of the United States; provided that license is active and that all dental licenses that individual possesses have been in good standing for five years prior to application. The credentials must show that no dental board actions have been taken during the five years prior to application; that no proceedings are pending in any states in which the applicant has had a license in the five years prior to application; and that a review of public records, the national practitioners data bank or other nationally recognized data resources that record actions against a dentist in the United States does not reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude.

D. The board may issue a general license to practice dentistry by credentials to an applicant who meets the requirements, including payment of appropriate fees and the passing of an examination covering the laws and rules of the practice of dentistry in New Mexico, of the Dental Health Care Act and rules promulgated pursuant to that act, and who:

(1) has maintained a uniform service practice in the United States military or public health service for three years immediately preceding the application; or

(2) is duly licensed by examination as a dentist pursuant to the laws of another state or territory of the United States.

E. The board may issue a specialty license by examination to an applicant who has passed a clinical and written examination given by the board or its examining agents that covers the applicant's specialty. The applicant shall have a postgraduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the joint commission on dental accreditation in one of the specialty areas of dentistry recognized by the American dental association. The applicant shall also meet all other requirements as established by rules of the board, which shall include an examination covering the laws and rules of the practice of dentistry in New Mexico. A specialty license limits the licensee to practice only in that specialty area.

F. The board may issue a specialty license, by credentials, without a practical or clinical examination to an applicant who is duly licensed by a clinical examination as a dentist under the laws of another state or territory of the United States and who has a postgraduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the joint commission on dental accreditation in one of the specialty areas of dentistry recognized by the American dental association; provided that license is active and that all dental licenses that individual possesses have been in good standing for five years prior to application. The credentials must show that no dental board actions have been taken during the five years prior to application; that no proceedings are pending in any states in which the applicant has had a license in the five years prior to application; and that a review of public records, the national practitioners data bank or other nationally recognized data resources that record actions against a dentist in the United States does not reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude. The applicant shall also meet all other qualifications as deemed necessary by rules of the board, which shall include an examination covering the laws and rules of the practice of dentistry in New Mexico. A specialty license limits the licensee to practice only in that specialty area."

Section 10. Section 61-5A-13 NMSA 1978 (being Laws 1994, Chapter 55, Section 13, as amended) is amended to read:

"61-5A-13. DENTAL HYGIENIST LICENSURE.--

A. Applicants for licensure shall have graduated and received a degree from an accredited dental hygiene educational program that provides a minimum of two academic years of dental hygiene curriculum and is a post-secondary educational institution accredited by the joint commission on dental accreditation and shall have

passed the written portion of the dental hygiene examination administered by the joint commission on national dental examinations of the American dental association or, if this test is not available, another written examination determined by the committee.

B. Applicants for licensure by examination shall be required, in addition to the requirements set forth in Subsection A of this section, to pass a written examination covering the laws and rules for practice in New Mexico. Each written examination shall be supplemented by a practical or clinical examination administered by the committee or its agents that reasonably tests the applicant's qualifications to practice as a dental hygienist. Upon an applicant passing the written and clinical examinations, the board, upon recommendation of the committee, shall issue a license to practice as a dental hygienist.

C. The board, upon the committee's recommendation, shall issue a license to practice as a dental hygienist by credentials without examination, including practical or clinical examination, to an applicant who is a duly licensed dental hygienist by examination under the laws of another state or territory of the United States and whose license is in good standing for the two previous years in that jurisdiction and if the applicant otherwise meets all other requirements of the Dental Health Care Act, including payment of appropriate fees and passing an examination covering the laws and rules pertaining to practice as a dental hygienist in New Mexico."

Section 11. Section 61-5A-14 NMSA 1978 (being Laws 1994, Chapter 55, Section 14) is amended to read:

"61-5A-14. TEMPORARY LICENSURE.--The board or the committee may issue a temporary license to practice dentistry or dental hygiene to any applicant who is licensed to practice dentistry or dental hygiene in another state or territory of the United States and who is otherwise qualified to practice dentistry or dental hygiene in this state. The following provisions shall apply:

A. the applicant shall hold a valid license in good standing in another state or territory of the United States;

B. the applicant shall practice dentistry or dental hygiene under the sponsorship of or in association with a licensed New Mexico dentist or dental hygienist;

C. the temporary license may be issued for those activities as stipulated by the board or committee in the rules of the board. It may be issued upon written application of the applicant when accompanied by such proof of qualifications as the secretary-treasurer of the board or committee, in his discretion, may require. Temporary licensees shall engage in only those activities specified on the temporary license for the time designated, and the temporary license shall identify the licensed New Mexico dentist or dental hygienist who will sponsor or associate with the applicant during the time the applicant practices dentistry or dental hygiene in New Mexico;

D. the sponsoring or associating dentist or dental hygienist shall submit an affidavit attesting to the qualifications of the applicant and the activities the applicant will perform;

E. the temporary license shall be issued for a period not to exceed twelve months and may be renewed upon application and payment of required fees;

F. the application for a temporary license under this section shall be accompanied by a license fee; and

G. the temporary licensee shall be required to comply with the Dental Health Care Act and all rules promulgated pursuant thereto."

Section 12. A new section of the Dental Health Care Act is enacted to read:

"NON-DENTIST OWNER--EMPLOYING OR CONTRACTING FOR DENTAL SERVICES.--

A. A person, corporation or agency that desires to function as a non-dentist owner in New Mexico shall apply to the board for the proper license and shall adhere to the requirements, re-licensure criteria and fees as established by the rules of the board.

B. Unless licensed as a dentist or non-dentist owner, or as otherwise exempt from the licensing requirements of the Dental Health Care Act, an individual or corporate entity shall not:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico."

Section 13. Section 61-5A-16 NMSA 1978 (being Laws 1994, Chapter 55, Section 16) is amended to read:

"61-5A-16. LICENSE AND CERTIFICATE RENEWALS.--

A. Except as provided in Subsection I of this section, all licensees shall be required to renew their licenses triennially as established in rules of the board.

B. All dental assistants certified in expanded functions shall be required to renew their certificates triennially as established in rules of the board.

C. The board or committee may establish a method to provide for staggered triennial terms and may prorate triennial renewal fees and impaired dentist and dental hygienist fees until staggered triennial renewal is established. The fact that a licensee has not received a renewal form from the board or committee shall not relieve the licensee of the duty to renew the license or certificate nor shall such omission on the part of the board or committee operate to exempt the licensee from the penalties for failure to renew the licensee's license or certificate.

D. All licensees shall pay a triennial renewal fee and an impaired dentist and dental hygienist fee, and all licensees shall return a completed renewal application form that includes proof of continuing education or continued competency.

E. Each application for triennial renewal of license shall state the licensee's full name, business address, the date and number of the license and all other information requested by the board or committee.

F. Any licensee who fails to submit an application for triennial renewal on or before July 1 but who submits an application for triennial renewal within thirty days thereafter shall be assessed a late fee.

G. Any licensee who fails to submit application for triennial renewal between thirty and sixty days of the July 1 deadline may have his license or certificate suspended. If the licensee renews by that time, the licensee shall be assessed a cumulative late fee.

H. The board or the committee may summarily revoke, for nonpayment of fees or failure to comply with continuing education or continued competency requirements, the license or certificate of any licensee or certificate holder who has failed to renew his license or certificate on or before August 31.

I. A license for a non-dentist owner shall be renewed triennially as established by rules. An application for renewal of a non-dentist owner license shall state the name, business address, date and number of the license and all other information as required by rule of the board. If a non-dentist owner fails to submit the application for renewal of the license by July 1, the board may assess a late fee. If the non-dentist owner fails to submit the application for a renewal license within sixty days of the July 1 renewal deadline, the board may suspend the license. The license of a non-dentist owner may be summarily revoked by the board for nonpayment of fees.

J. Assessment of fees pursuant to this section is not subject to the Uniform Licensing Act."

Section 14. Section 61-5A-17 NMSA 1978 (being Laws 1994, Chapter 55, Section 17) is amended to read:

"61-5A-17. RETIREMENT AND INACTIVE STATUS--REACTIVATION.--

A. Any dentist or dental hygienist who wishes to retire from the practice of dentistry or dental hygiene shall meet all requirements for retirement as set by rules of the board and the committee. The licensee shall notify the board or the committee in writing before the expiration of the licensee's current license, and the secretary of the board or the committee shall acknowledge the receipt of notice and record the same. If, within a period of three years from the date of retirement, the dentist or dental hygienist wishes to resume practice, the applicant shall so notify the board or the committee in writing and give proof of completing all requirements as prescribed by rules of the board and the committee to reactivate the license.

B. At any time during the three-year period following retirement, a dentist or dental hygienist with a retired New Mexico license may request in writing to the board or the committee that his license be placed in inactive status. Upon the receipt of the application and fees as determined by the board or the committee and with the approval of the board or the committee, the license may be placed in inactive status.

C. A licensee whose license has been placed in inactive status may not engage in any of the activities contained within the scope of practice of dentistry or dental hygiene in New Mexico described in Section 61-5A-4 NMSA 1978.

D. Licensees with inactive licenses must renew their licenses triennially and comply with all the requirements set by the board and the committee.

E. If a licensee with an inactive license wishes to resume the active practice of dentistry or dental hygiene, the licensee must notify the board or the committee in writing and provide proof of completion of all requirements to reactivate the license as prescribed by rule of the board or the committee. Upon payment of all fees due, the board may reactivate the license and the licensee may resume the practice of dentistry or dental hygiene subject to any stipulations of the board or the committee.

F. Inactive licenses must be reactivated or permanently retired within nine years of having been placed in inactive status.

G. Assessment of fees pursuant to this section is not subject to the Uniform Licensing Act."

Section 15. Section 61-5A-18 NMSA 1978 (being Laws 1994, Chapter 55, Section 18) is amended to read:

"61-5A-18. PRACTICING WITHOUT A LICENSE--PENALTY.--

A. Any person who practices dentistry or who attempts to practice dentistry without first complying with the provisions of the Dental Health Care Act and without being the holder of a license entitling the practitioner to practice dentistry in New Mexico is guilty of a fourth degree felony and upon conviction shall be sentenced

pursuant to the provisions of the Criminal Sentencing Act to imprisonment for a definite period not to exceed eighteen months and, in the discretion of the sentencing court, to a fine not to exceed five thousand dollars (\$5,000), or both. Each occurrence of practicing dentistry or attempting to practice dentistry without complying with the Dental Health Care Act shall be a separate violation.

B. Any person who practices as a dental hygienist or who attempts to practice as a dental hygienist without first complying with the provisions of the Dental Health Care Act and without being the holder of a license entitling the practitioner to practice as a dental hygienist in New Mexico is guilty of a misdemeanor and upon conviction shall be sentenced under the provisions of the Criminal Sentencing Act to imprisonment for a definite period less than one year and, in the discretion of the sentencing court, to a fine not to exceed one thousand dollars (\$1,000), or both. Each occurrence of practicing as a dental hygienist or attempting to practice as a dental hygienist without complying with the Dental Health Care Act shall be a separate violation.

C. A person that functions or attempts to function as a non-dentist owner or who is an officer of a corporate entity that functions or attempts to function as a non-dentist owner in New Mexico without first complying with the provisions of the Dental Health Care Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of the Criminal Sentencing Act to imprisonment for a definite period not to exceed one year and, in the discretion of the sentencing court, to a fine not to exceed one thousand dollars (\$1,000), or both. Each occurrence of functioning as a non-dentist owner without complying with the Dental Health Care Act shall be a separate violation.

D. The attorney general or district attorney shall prosecute all violations of the Dental Health Care Act.

E. Upon conviction of any person for violation of any provision of the Dental Health Care Act, the convicting court may, in addition to the penalty provided in this section, enjoin the person from any further or continued violations of the Dental Health Care Act and enforce the order of contempt proceedings."

Section 16. Section 61-5A-20 NMSA 1978 (being Laws 1994, Chapter 55, Section 20) is amended to read:

"61-5A-20. FEES.--The board and the committee shall establish a schedule of reasonable fees not to exceed the following:

	<u>Dentists</u>	<u>Dental Hygienists</u>
A. licensure by examination	\$1,500	\$1,000
B. licensure by credential	\$3,000	\$1,500

C. specialty license by examination	\$1,500		
D. specialty license by credential	\$3,000		
E. temporary license			
48 hours	\$ 50		\$ 50
six months	\$ 300		\$ 200
12 months	\$ 450		\$ 300
F. application for certification in local anesthesia			\$ 40
G. examination in local anesthesia			\$ 150
H. triennial license renewal	\$ 600		\$ 450
I. late renewal	\$ 100		\$ 100
J. reinstatement of license	\$ 450	\$ 300	
K. administrative fees	\$ 300		\$ 300
L. impaired dentist or dental hygienist	\$ 150		\$ 75
M. assistant certificate			\$ 100
N. application for certification for collaborative practice			\$ 150
O. annual renewal for			

collaborative practice		\$ 50
P. application for inactive		
status	\$ 50	\$ 50
Q. triennial renewal of		
inactive license	\$ 90	\$ 90

Non-dentist Owners

R. non-dentist owners license (initial) \$ 300

S. non-dentist owners license triennial renewal \$ 150."

Section 17. Section 61-5A-21 NMSA 1978 (being Laws 1994, Chapter 55, Section 21) is amended to read:

"61-5A-21. DISCIPLINARY PROCEEDINGS--APPLICATION OF UNIFORM LICENSING ACT.--

A. In accordance with the Uniform Licensing Act and rules of the board, the board and committee may fine and may deny, revoke, suspend, stipulate or otherwise limit any license or certificate, including those of licensed non-dentist owners, held or applied for under the Dental Health Care Act, upon findings by the board or the committee that the licensee, certificate holder or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license or certificate;

(2) has been convicted of a crime punishable by incarceration in a federal prison or state penitentiary; provided a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of such conviction;

(3) is guilty of gross incompetence or gross negligence, as defined by rules of the board, in the practice of dentistry, dental hygiene or dental assisting;

(4) is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such degree as to render the licensee unfit to practice;

(5) is guilty of unprofessional conduct as defined by rule;

(6) is guilty of any violation of the Controlled Substances Act;

(7) has violated any provisions of the Dental Health Care Act or rule or regulation of the board or the committee;

(8) is guilty of willfully or negligently practicing beyond the scope of licensure;

(9) is guilty of practicing dentistry or dental hygiene without a license or aiding or abetting the practice of dentistry or dental hygiene by a person not licensed under the Dental Health Care Act;

(10) is guilty of obtaining or attempting to obtain any fee by fraud or misrepresentation or has otherwise acted in a manner or by conduct likely to deceive, defraud or harm the public;

(11) is guilty of patient abandonment;

(12) is guilty of failing to report to the board any adverse action taken against the licensee by a licensing authority, peer review body, malpractice insurance carrier or other entity as defined in rules of the board and the committee;

(13) has had a license, certificate or registration to practice as a dentist or dental hygienist revoked, suspended, denied, stipulated or otherwise limited in any jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts described in this subsection. A certified copy of the decision of the jurisdiction taking such disciplinary action will be conclusive evidence; or

(14) has failed to furnish the board, its investigators or its representatives with information requested by the board or the committee in the course of an official investigation.

B. Disciplinary proceedings may be instituted by sworn complaint by any person, including a board or committee member, and shall conform with the provisions of the Uniform Licensing Act.

C. Licensees and certificate holders shall bear the costs of disciplinary proceedings unless exonerated.

D. 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.

E. 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 or accounting costs when audits are included as a condition of probation."

Section 18. Section 61-5A-25 NMSA 1978 (being Laws 1994, Chapter 55, Section 25) is amended to read:

"61-5A-25. PROTECTED ACTIONS AND COMMUNICATIONS.--

A. No member of the board or the committee or any ad hoc committee appointed by the board or the committee shall bear liability or be subject to civil damages or criminal prosecutions for any action undertaken or performed within the proper functions of the board or the committee.

B. All written and oral communication made by any person to the board or the committee relating to actual or potential disciplinary action, which includes complaints made to the board or the committee, shall be confidential communications and are not public records for the purposes of the Public Records Act. All data, communications and information acquired, prepared or disseminated by the board or the committee relating to actual or potential disciplinary action or its investigation of complaints shall not be disclosed except to the extent necessary to carry out the purposes of the board or the committee or in a judicial appeal from the actions of the board or the committee or in a referral of cases made to law enforcement agencies, national database clearinghouses or other licensing boards.

C. Information contained in complaint files is public information and subject to disclosure when the board or the committee acts on a complaint and issues a notice of contemplated action or reaches a settlement prior to the issuance of a notice of contemplated action.

D. No person or legal entity providing information to the board or the committee, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions."

Section 19. Section 61-5A-26 NMSA 1978 (being Laws 1994, Chapter 55, Section 26) is amended to read:

"61-5A-26. FUND ESTABLISHED.--

A. There is created in the state treasury the "board of dental health care fund".

B. All money received by the board and money collected under the Dental Health Care Act shall be deposited with the state treasurer. The state treasurer shall credit this money to the board of dental health care fund except money collected for the impaired assessment, which shall be held separate from the board fund. Fees collected by the board from fines shall be deposited in the board of dental health care fund and, at the discretion of the board and the committee, may be transferred into the impaired dentists and dental hygienists fund.

C. Payment out of the board of dental health care fund shall be on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts paid into the board of dental health care fund are subject to the order of the board and are to be used only for meeting necessary expenses incurred in executing the provisions and duties of the Dental Health Care Act. All money unused at the end of any fiscal year shall remain in the fund for use in accordance with provisions of the Dental Health Care Act.

E. All funds that have accumulated to the credit of the board under any previous law shall be continued for use by the board in administration of the Dental Health Care Act."

Section 20. Section 61-5A-30 NMSA 1978 (being Laws 1994, Chapter 55, Section 42, as amended) is amended to read:

"61-5A-30. DELAYED REPEAL.--The New Mexico board of dental health care is terminated on July 1, 2009 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, 2010. Effective July 1, 2010, the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act are repealed."

Section 21. Section 61-5B-2 NMSA 1978 (being Laws 1994, Chapter 55, Section 31) is amended to read:

"61-5B-2. DEFINITIONS.--As used in the Impaired Dentists and Dental Hygienists Act:

- A. "board" means the New Mexico board of dental health care;
- B. "dental hygienists committee" means the New Mexico dental hygienists committee;
- C. "dentistry or dental hygiene" means the practice of dentistry or dental hygiene; and
- D. "licensee" means a dentist or dental hygienist licensed by the board."

SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 453, AS AMENDED

CHAPTER 410

CHAPTER 410, LAWS 2003

AN ACT

RELATING TO BOATS; CHANGING REQUIREMENTS AND DUTIES PERTAINING TO BOAT DEALER AND MANUFACTURER NUMBERS; REQUIRING BOAT DEALERS AND MANUFACTURERS TO OBTAIN DEALER LICENSES; ESTABLISHING REQUIREMENTS AND DUTIES PERTAINING TO DEALER LICENSES; ESTABLISHING LICENSE FEES; PROVIDING A PENALTY; AMENDING, REPEALING AND ENACTING A SECTIONS OF THE NMSA 1978.

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

Section 1. Section 66-4-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 214, as amended) is amended to read:

"66-4-1. DEALERS, WRECKERS, WHOLESALERS AND DISTRIBUTORS OF VEHICLES AND TITLE SERVICE COMPANIES MUST BE LICENSED-- PRESUMPTION OF CONDUCTING BUSINESS.--

A. A person, unless licensed to do so by the department, shall not carry on or conduct the active trade or business of:

(1) a dealer in motor vehicles of a type subject to registration pursuant to the Motor Vehicle Code, including:

(a) trailers, but not trailers sold as kits;

(b) recreational vehicles designed to be towed; and

(c) motorcycles over fifty-five cubic centimeters;

(2) dismantling any vehicle for the resale of the parts. Any person possessing three or more wrecked, dismantled or partially wrecked or dismantled vehicles and selling or offering for sale a used vehicle part and who regularly sells or offers for sale used vehicles or used vehicle parts shall be presumed to be conducting the business of wrecking or dismantling a vehicle for the resale of the parts;

(3) wholesaling of vehicles. Any person who sells or offers for sale vehicles of a type subject to registration in this state, to a vehicle dealer licensed pursuant to the Motor Vehicle Code or who is franchised by a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles dealt in by such manufacturer,

distributor or vehicle dealer shall be presumed to be conducting the business of wholesaling;

(4) distributing of vehicles. Any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer shall be presumed to be conducting the business of distributing vehicles; or

(5) a title service company. Any person who for consideration prepares or submits applications for the registration of or title to vehicles shall be presumed to be engaging in the business of a title service company.

B. Application for a dealer, wholesaler, distributor or wrecker of vehicles license or a title service company license shall be made upon the form prescribed by the department and shall contain the name and address of the applicant and, when the applicant is a partnership, the name and address of each partner or, when the applicant is a corporation, the names of the principal officers of the corporation and the state in which incorporated and the place where the business is to be conducted and the nature of the business and such other information as may be required by the department. Every application shall be verified by the oath or affirmation of the applicant, if an individual, or, in the event an applicant is a partnership or corporation, by a partner or officer of the partnership or corporation. Every application shall be accompanied by the fee required by law.

C. A metal processor or dealer in scrap who dismantles, processes for scrap, shreds, compacts, crushes or otherwise destroys more than three vehicles within a period of one year shall be licensed pursuant to the provisions of Sections 66-4-1 through 66-4-9 NMSA 1978.

D. To ensure that a dealer, wholesaler, distributor, wrecker of vehicles or title service company complies with this section, the secretary may apply to a district court of this state to have a person operating without a license as required by this section or operating without the bond required by Section 66-4-7 NMSA 1978 enjoined from engaging in business until that person complies with the requirements of licensing as provided by this section and the bonding requirements of Section 66-4-7 NMSA 1978.

E. Upon application to a court for the issuance of an injunction against an unlicensed person, the court may issue an order temporarily restraining that person from doing business. The court shall hear the matter within three days and, upon a showing by the preponderance of the evidence that the person is operating without a license and that the person has been given notice of the hearing as required by law, the court may enjoin the person from engaging in business in New Mexico until the person ceases to be unlicensed. Upon issuing an injunction, the court may also order the business premises of the person to be sealed by the sheriff and may allow the person access thereto only upon approval of the court.

F. A temporary restraining order shall not be issued against a person who has complied with the provisions of this section. Upon a showing to the court by a person against whom a temporary restraining order has been issued that he has a license in accordance with the provisions of this section, the court shall dissolve or set aside the temporary restraining order."

Section 2. Section 66-12-3 NMSA 1978 (being Laws 1959, Chapter 338, Section 3, as amended) is amended to read:

"66-12-3. DEFINITIONS.--As used in the Boat Act:

A. "vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

B. "motorboat" means any vessel propelled by machinery, whether or not machinery is the principal source of propulsion, but does not include a vessel that has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto; "motorboat" includes any vessel propelled or designed to be propelled by sail and that does not have a valid document issued by a federal agency, but does not include a sailboard or windsurf board;

C. "owner" means a person, other than a lienholder, having the property in or title to a motorboat; "owner" includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but excludes a lessee under a lease not intended as security;

D. "waters of this state" means waters within the territorial limits of this state;

E. "person" means an individual, partnership, firm, corporation, association or other entity;

F. "operate" means to navigate or otherwise use a motorboat or a vessel;

G. "state agency" means any department, institution, board, bureau, commission, district or committee of the government of this state and means every office or officer of any state agency;

H. "subdivision of the state" means every county, county institution, board, bureau or commission, incorporated city, town or village, drainage, conservancy, irrigation or other district and every office or officer of any subdivision of this state;

I. "division" means the state parks division of the energy, minerals and natural resources department;

J. "boat" means a motorboat that is ten feet in length or longer;

K. "dealer" means any person who engages in whole or in part in the business of buying, selling or exchanging new and unused motorboats or used motorboats, or both, either outright or on conditional sale, bailment, lease, chattel mortgage or otherwise and who has an established place of business for sale, trade and display of motorboats; "dealer" includes a yacht broker;

L. "lien" means every chattel mortgage, conditional sales contract, lease, purchase lease, sales lease, contract, security interest under the Uniform Commercial Code or other instrument in writing having the effect of a mortgage or lien or encumbrance upon, or intended to hold the title to any boat in the former owner, possessor or grantor;

M. "manufacturer" means any person engaged in the business of manufacturing or importing new and unused motorboats for the purpose of sale or trade;

N. "demonstration" means:

(1) the operation of a motorboat on the waters of this state for the purpose of selling, transferring, bartering, trading, negotiating or attempting to negotiate the sale or exchange of an interest in a motor boat; or

(2) the operation of a motorboat by a manufacturer for the purpose of testing the motorboat; and

O. "established place of business" means a salesroom in an enclosed building or structure that the dealer owns or leases, where the business of bartering, trading and selling of motorboats is conducted and where the books, records and files necessary to conduct the business are maintained."

Section 3. Section 66-12-6 NMSA 1978 (being Laws 1965, Chapter 48, Section 1, as amended) is amended to read:

"66-12-6. DEALER AND MANUFACTURER NUMBERS--FEE--CERTIFICATES OF ORIGIN--RECORDS.--

A. A dealer or manufacturer that demonstrates motorboats on the public waters of this state shall file an application for a dealer or manufacturer number. The number shall be in lieu of a certificate of number for each motorboat intended or offered for sale.

B. Application for a dealer or manufacturer number shall be in the form prescribed by the division. The application shall state that the applicant is a motorboat dealer or manufacturer and that the applicant will operate a motorboat upon the waters

of this state only for test or demonstration purposes. The statement shall be verified before a state officer who is authorized to administer an oath. The fee for a dealer or manufacturer number is ten dollars (\$10.00) annually as prescribed by the division.

C. The division shall issue a certificate of a dealer or manufacturer number to an applicant who submits a complete application and full payment of the dealer or manufacturer number fee to the division. The certificate shall be issued after the applicant obtains a dealer license from the motor vehicle division of the taxation and revenue department and shall contain the following:

(1) a dealer or manufacturer number that contains two state identification letters, followed by four numbers and two additional letters that are unique to dealers or manufacturers;

(2) the expiration date of the certificate;

(3) the name and business address of the applicant;

(4) the address of the principal place of business of the applicant;

and

(5) a conspicuous statement that the division has certified the applicant as a dealer or manufacturer.

D. The dealer or manufacturer number shall be painted on or attached to plates that are firmly attached to each side of the front of a motorboat of the dealer or manufacturer while it is afloat upon the waters of this state.

E. A dealer or manufacturer who operates more than one motorboat for test or demonstration purposes on the waters of this state at the same time shall obtain and display a separate dealer or manufacturer number for each motorboat tested or demonstrated.

F. A manufacturer or dealer shall not transfer ownership of a new boat without supplying the transferee with the manufacturer's certificate of origin signed by the manufacturer's authorized agent. The certificate shall contain information the division requires.

G. Every dealer shall maintain for three years a record of any boat he bought, sold, exchanged or received for sale or exchange. This record shall be open to inspection by division representatives during reasonable business hours."

Section 4. A new section of the Boat Act is enacted to read:

"PROHIBITED DISPLAY OF DEALER OR MANUFACTURER NUMBERS.--A dealer or manufacturer shall not display a dealer or manufacturer number on a motorboat that is not being operated for test or demonstration purposes."

Section 5. A new section of the Boat Act is enacted to read:

"DEALER LICENSE.--

A. A person shall not engage in business as a dealer or manufacturer without obtaining a valid dealer license from the motor vehicle division of the taxation and revenue department, unless the person has a valid motor vehicle dealer license. A dealer or manufacturer shall annually file an application with the motor vehicle division for a dealer license for each established place of business of the dealer or manufacturer.

B. A person shall file an application for a dealer license with the motor vehicle division of the taxation and revenue department on a form prescribed by the motor vehicle division. The application shall contain the name, address and telephone number of the applicant, the signature of the applicant or the signatures of all of the officers of a corporate applicant, the address of the established place of business, the federal taxpayer identification number of the applicant and other information that the motor vehicle division may require. The application shall state that the applicant will engage in business as a dealer. The statement shall be verified before a state officer authorized to administer an oath. The fee for a dealer license shall be prescribed by the motor vehicle division but shall not exceed fifty dollars (\$50.00) annually.

C. The motor vehicle division of the taxation and revenue department shall issue a dealer license to an applicant who submits a complete application and full payment of the dealer license fee to the motor vehicle division. The license shall contain the following:

- (1) the license number;
- (2) the expiration date of the license;
- (3) the name and business address of the licensee;
- (4) the address of the location for which the license was issued;

and

(5) a statement requiring that the license be conspicuously displayed at the location for which the license was issued.

D. A dealer license shall specify the location of each place of business in which the licensee engages in business as a dealer. The dealer shall notify the motor

vehicle division of the taxation and revenue department of a change of ownership, location or name of the place of business within ten days of the change.

E. A dealer license shall authorize the licensed activity at only one business establishment. A dealer shall obtain a supplemental license from the motor vehicle division of the taxation and revenue department for each additional establishment owned or operated by the dealer. The application for a supplemental license shall be in a form prescribed by the motor vehicle division. The motor vehicle division shall issue a supplemental license to an applicant who possesses a valid dealer license, submits a complete application and meets all other requirements of the motor vehicle division.

F. A dealer license or supplemental license shall be conspicuously displayed at the location of the established place of business for which it was issued."

Section 6. A new section of the Boat Act is enacted to read:

"DEALER LICENSE DENIAL, SUSPENSION AND REVOCATION.--The motor vehicle division of the taxation and revenue department may deny, suspend or revoke a dealer license for:

A. a material misrepresentation communicated by a dealer to the motor vehicle division;

B. a lack of fitness as proscribed by rule of the motor vehicle division; or

C. a willful violation of a federal or state law relating to the sale, distribution, financing, registration, taxing or insuring of motorboats."

Section 7. A new section of the Boat Act is enacted to read:

"DEALER BONDS--REQUIRED INSURANCE.--A person licensed as a dealer pursuant to the Boat Act shall file with the state parks division a bond in the amount of fifty thousand dollars (\$50,000) unless there is a bond on file with the motor vehicle division of the taxation and revenue department for a motor vehicle dealer's license and such proof is submitted to the state parks division. The bond shall be issued by a corporate surety licensed to conduct business within the state. The bond shall be issued under the condition that the applicant shall not practice fraud or violate any provision of the Boat Act. A person who has obtained a dealer license shall furnish evidence that the person has liability insurance for the established place of business for which the license was obtained."

Section 8. A new section of the Boat Act is enacted to read:

"BOAT ACT VIOLATION--PENALTY.--A person who violates any provision of the Boat Act is guilty of a misdemeanor and shall be punished by a fine of three hundred dollars (\$300) or by imprisonment for at least thirty days, or both."

Section 9. REPEAL.--Section 66-4-8 NMSA 1978 (being Laws 1978, Chapter 35, Section 221, as amended) is repealed.

SENATE CONSERVATION COMMITTEE SUBSTITUTE

FOR SENATE BILL 79, AS AMENDED

CHAPTER 411

CHAPTER 411, LAWS 2003

AN ACT

RELATING TO CRIMINAL LAW; AMENDING A SECTION OF THE VICTIMS OF CRIME ACT TO EXPAND THE DEFINITION OF "CRIMINAL OFFENSE" SET FORTH IN THAT ACT.

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

Section 1. Section 31-26-3 NMSA 1978 (being Laws 1994, Chapter 144, Section 3, as amended) 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;

- 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
- 1978; (7) murder, as provided in Section 30-2-1 NMSA 1978;
- 1978; (8) voluntary manslaughter, as provided in Section 30-2-3 NMSA
- 1978; (9) involuntary manslaughter, as provided in Section 30-2-3 NMSA
- NMSA 1978; (10) kidnapping, as provided in Section 30-4-1 NMSA 1978;
- NMSA 1978; (11) criminal sexual penetration, as provided in Section 30-9-11
- 13 NMSA 1978; (12) criminal sexual contact of a minor, as provided in Section 30-9-
- 1978; (13) armed robbery, as provided in Section 30-16-2 NMSA 1978;
- 1978; (14) homicide by vehicle, as provided in Section 66-8-101 NMSA
- NMSA 1978; (15) great bodily injury by vehicle, as provided in Section 66-8-101
- 1 NMSA 1978; (16) abandonment or abuse of a child, as provided in Section 30-6-
- and Stalking Act; (17) stalking or aggravated stalking, as provided in the Harassment
- in Section 30-3-13 NMSA 1978; (18) aggravated assault against a household member, as provided
- (19) assault against a household member with intent to commit a violent felony, as provided in Section 30-3-14 NMSA 1978;
- (20) battery against a household member, as provided in Section 30-3-15 NMSA 1978; or

(21) aggravated battery against a household member, as provided in Section 30-3-16 NMSA 1978;

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 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 339

CHAPTER 412

CHAPTER 412, LAWS 2003

AN ACT

RELATING TO GROUP INSURANCE PLANS; PROVIDING THAT LEGISLATORS, UNDER CERTAIN CONDITIONS, ARE ELIGIBLE FOR BENEFITS PURSUANT TO THE GROUP BENEFITS ACT.

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

Section 1. Section 10-7-4 NMSA 1978 (being Laws 1941, Chapter 188, Section 1, as amended) is amended to read:

"10-7-4. GROUP INSURANCE--CAFETERIA PLAN--CONTRIBUTIONS FROM PUBLIC FUNDS.--

A. All state departments and institutions and all political subdivisions of the state, excluding municipalities, counties and political subdivisions of the state with twenty-five employees or fewer, shall cooperate in providing group term life, medical or disability income insurance for the benefit of eligible employees or salaried officers of the respective departments, institutions and subdivisions.

B. The group insurance contributions of the state or any of its departments or institutions, including institutions of higher education and the public schools, shall be made as follows:

(1) seventy-five percent of the cost of the insurance of an employee whose annual salary is less than fifteen thousand dollars (\$15,000);

(2) seventy percent of the cost of the insurance of an employee whose annual salary is fifteen thousand dollars (\$15,000) or more but less than twenty thousand dollars (\$20,000);

(3) sixty-five percent of the cost of the insurance of an employee whose annual salary is twenty thousand dollars (\$20,000) or more but less than twenty-five thousand dollars (\$25,000); or

(4) sixty percent of the cost of the insurance of an employee whose annual salary is twenty-five thousand dollars (\$25,000) or more; and

(5) the state shall not make any group insurance contributions for legislators. A legislator shall be eligible for group benefits only if the legislator contributes one hundred percent of the cost of the insurance.

As used in this subsection, "cost of the insurance" means the premium required to be paid to provide coverages. Any contributions of the political subdivisions of the state, except the public schools and political subdivisions of the state with twenty-five employees or fewer, shall not exceed sixty percent of the cost of the insurance.

C. When a public employee elects to participate in a cafeteria plan as authorized by the Cafeteria Plan Act and enters into a salary reduction agreement with the governmental employer, the provision of Subsection B of this section with respect to the maximum contributions that can be made by the employer are not violated and will still apply. The employer percentage or dollar contributions as provided in Subsection B of this section shall be determined by the employee's gross salary prior to any salary reduction agreement.

D. 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 responsible public body that administers a plan offered pursuant to this section shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection."

Section 2. Section 10-7B-2 NMSA 1978 (being Laws 1989, Chapter 231, Section 2) is amended to read:

"10-7B-2. DEFINITIONS.--As used in the Group Benefits Act:

- A. "committee" means the group benefits committee;
- B. "director" means the director of the risk management division of the general services department;
- C. "employee" means a salaried officer, employee or legislator of the state or a salaried officer or employee of a local public body;
- D. "local public body" means any New Mexico incorporated municipality, county or school district;
- E. "professional claims administrator" means any person or legal entity that has at least five years of experience handling group benefits claims, as well as such other qualifications as the director may determine from time to time with the committee's advice; and
- F. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."

Section 3. Section 10-7B-6 NMSA 1978 (being Laws 1989, Chapter 231, Section 6) is amended to read:

"10-7B-6. STATE EMPLOYEES GROUP BENEFITS SELF-INSURANCE PLAN--
AUTHORIZATION--LOCAL PUBLIC BODY PARTICIPATION.--

A. The risk management division of the general services department may, with the prior advice of the committee, establish and administer a group benefits self-insurance plan, providing life, vision, health, dental and disability coverages, or any combination of such coverages, for employees of the state and of participating local public bodies. Any such group benefits self-insurance plan shall afford coverage for employees' dependents at each employee's option. Any such group benefits self-insurance plan may consist of self-insurance or a combination of self-insurance and insurance; provided that particular coverages or risks may be fully insured, fully self-insured or partially insured and partially self-insured.

B. The director, with the advice of the committee, shall establish by regulation or letter of administration the types, extent, nature and description of coverages, the eligibility rules for participation, the deductibles, rates and all other matters reasonably necessary to carry on or administer a group benefits self-insurance plan established pursuant to Subsection A of this section.

C. The contribution of each participating state agency to the cost of any such group benefits self-insurance plan shall not exceed that percentage provided for state group benefits insurance plans as provided by law. The contribution of a participating local public body to the cost of any such group benefits self-insurance plan shall not exceed that percentage provided for local public body group benefits insurance plans as provided by law.

D. Except as provided in Subsection E of this section, public employees' contributions to the cost of any group benefits self-insurance plan may be deducted from their salaries and paid directly to the group self-insurance fund; provided that where risks are insured or reinsured, the director may authorize payment of the costs of such insurance or reinsurance directly to the insurer or reinsurer.

E. A legislator and the legislator's covered dependents are eligible to participate in and receive benefits from the group benefits self-insurance plan if the legislator pays monthly premiums in amounts that equal one hundred percent of the cost of the insurance. The premiums shall be paid directly to the group self-insurance fund; provided that where risks are insured or reinsured, the director may authorize payment of the premiums directly to the insurer or reinsurer.

F. Local public bodies and state agencies that are not participating in the state group benefits insurance plan or self-insurance plan may elect to participate in any group benefits self-insurance plan established pursuant to Subsection A of this section by giving written notice to the director on a date set by the director, which date shall not be later than ninety days prior to the date participation is to begin. The director shall determine an initial rate for the electing entity in accordance with a letter of administration setting forth written guidelines established by the director with the committee's advice. The initial rate shall be based on the claims experience of the electing entity's group for the three immediately preceding continuous years. If three years of continuous experience is not available, a rate fixed for the entity by the director with the committee's advice shall apply, and the electing entity's group shall be rerated on the first premium anniversary following the date one full year of experience for the group becomes available. Any such election may be terminated effective not earlier than June 30 of the third calendar year succeeding the year in which the election became effective or on any June 30 thereafter. Notice of termination shall be made in writing to the director not later than April 1 immediately preceding the June 30 on which participation will terminate. A reelection to participate in the plan following a termination may not be made effective for at least three full years following the effective date of termination.

G. As soon as practicable, the director with the committee's advice shall establish an experience rating plan for state agencies and local public bodies participating in any group benefits self-insurance plan created pursuant to Subsection A of this section. Rates applicable to state agencies and participating local public bodies shall be based on such experience rating plan. Any such experience rating plan may

provide separate rates for individual state agencies and individual local public bodies or for such other experience centers as the director may determine."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 503, AS AMENDED

CHAPTER 413

CHAPTER 413, LAWS 2003

AN ACT

RELATING TO HEALTH CARE FOR INDIGENTS; REVISING REIMBURSEMENT CRITERIA; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 27-5-3 NMSA 1978 (being Laws 1965, Chapter 234, Section 3, as amended) is amended to read:

"27-5-3. PUBLIC ASSISTANCE PROVISIONS.--

A. A hospital shall not be paid from the fund under the Indigent Hospital and County Health Care Act for costs of an indigent patient for services that have been determined by the department to be eligible for medicaid reimbursement. However, nothing in the Indigent Hospital and County Health Care Act shall be construed to prevent the board from transferring money from the fund to the sole community provider fund or the county-supported medicaid fund for support of the state medicaid program.

B. No action for collection of claims under the Indigent Hospital and County Health Care Act shall be allowed against an indigent patient who is medicaid eligible for medicaid covered services, nor shall action be allowed against the person who is legally responsible for the care of the indigent patient during the time that person is medicaid eligible."

Section 2. Section 27-5-4 NMSA 1978 (being Laws 1965, Chapter 234, Section 4, as amended by Laws 2001, Chapter 30, Section 1, Laws 2001, Chapter 272, Section 1 and also by Laws 2001, Chapter 280, Section 1) 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 public regulation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and charges established by public regulation 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, admitted to a hospital for care or treated by a health care provider;

D. "hospital" means a 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:

(1) 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 costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be based on medicaid fee-for-service reimbursement rates for hospitals, licensed medical doctors and osteopathic physicians;

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 a 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:

(1) a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines; or

(2) an acute care general hospital licensed by the department of health that is qualified, pursuant to rules adopted by the state agency primarily responsible for the medicaid program, to receive distributions from the sole community provider fund;

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 set by the department of health;

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;

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;

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;

(8) a mental health center; or

(9) a licensed medical doctor, osteopathic physician, dentist, optometrist or expanded practice nurse when providing emergency services, as determined by the board, in a hospital to an indigent patient;

O. "health care services" means 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;

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 that demonstrates coordination between the county and state and local health planning efforts; and

Q. "commission" means the New Mexico health policy commission."

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 not 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 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 furnished by 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 an investigation to determine the validity of claims made upon the fund for an 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 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 thirty 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 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 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. shall, in carrying out the provisions of the Indigent Hospital and County Health Care Act, comply with the standards of the federal Health Insurance Portability and Accountability Act of 1996;

P. may provide for the transfer of money from the fund to the county-supported medicaid fund to meet the requirements of the Statewide Health Care Act; and

Q. may contract with ambulance providers, hospitals or health care providers for the provision of health care services."

Section 4. Section 27-5-11 NMSA 1978 (being Laws 1965, Chapter 234, Section 12, as amended) is amended to read:

"27-5-11. HOSPITALS AND AMBULANCE SERVICES--HEALTH CARE PROVIDERS--REQUIRED TO FILE DATA--SOLE COMMUNITY PROVIDER HOSPITAL DUTIES.--

A. An ambulance service, hospital or health care provider in New Mexico or licensed out-of-state hospital, prior to the filing of a claim with the board, shall have placed on file with the board:

(1) current data, statistics, schedules and information deemed necessary by the board to determine the cost for all patients in that hospital or cared for by that health care provider or tariff rates or charges of an ambulance service;

(2) proof that the hospital, ambulance service or health care provider is licensed under the laws of this state or the state in which the hospital operates; and

(3) other information or data deemed necessary by the board.

B. A sole community provider hospital requesting or receiving medicaid sole community provider hospital payments shall:

(1) accept indigent patients and request reimbursement for those patients through the appropriate county indigent fund. The responsible county shall approve requests meeting its eligibility standards and notify the hospital of such approval;

(2) confirm the amount of payment authorized by each county for indigent patients, to that county for the previous fiscal year, by September 30 of each calendar year;

(3) negotiate with each county the amount of indigent hospital payments anticipated for the following fiscal year by December 31 of each year; and

(4) provide to the department prior to January 15 of each year the amount of the authorized indigent hospital payments anticipated for the following fiscal year after an agreement has been reached on the amount with each responsible county and such other related information as the department may request."

Section 5. Section 27-5-12.2 NMSA 1978 (being Laws 1993, Chapter 321, Section 15) is amended to read:

"27-5-12.2. DUTIES OF THE COUNTY--SOLE COMMUNITY PROVIDER HOSPITAL PAYMENTS.--A county that authorizes payment for services to a sole community provider hospital shall:

A. determine eligibility for benefits and determine an amount payable on each claim for services to indigent patients from sole community provider hospitals;

B. notify the sole community provider hospital of its decision on each request for payment while not actually reimbursing the hospital for the services that are reimbursed with federal funds under the state medicaid program;

C. confirm the amount of the sole community provider hospital payments authorized for each hospital for the past fiscal year by September 30 of the current fiscal year based on a report prepared by the hospital using a format jointly prescribed by the counties and hospitals that provides aggregate data, including the number of indigent patients served and the total cost of uncompensated care provided by the hospital;

D. negotiate agreements with each sole community provider hospital providing services for county residents on the anticipated amount of the payments for the following fiscal year; provided that the agreements shall be in compliance with federal regulations regarding intergovernmental transfers and provider contributions and shall not include provisions for reimbursements to counties of matching and sole community provider fund allocations; and

E. provide the department by January 15 of each year with the budgeted amount of sole community provider

hospital payments, by hospital, for the following fiscal year."

SENATE BILL 524, AS AMENDED

CHAPTER 414

CHAPTER 414, LAWS 2003

AN ACT

RELATING TO TAXATION; EXPANDING THE AUTHORITY OF THE TAXATION AND REVENUE DEPARTMENT TO ENTER INTO A COOPERATIVE TAX CREDIT AGREEMENT WITH A TRIBE THAT HAS IMPOSED A TAX SIMILAR TO THE GROSS RECEIPTS TAX; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-9-88.1 NMSA 1978 (being Laws 1999, Chapter 223, Section 2, as amended) is amended to read:

"7-9-88.1. CREDIT--GROSS RECEIPTS TAX--TAX PAID TO CERTAIN TRIBES.--

A. If on a taxable transaction taking place on tribal land a qualifying gross receipts, sales or similar tax has been levied by the tribe, the amount of the tribe's tax may be credited against gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and a local option gross receipts tax on the same transaction. The amount of the credit shall be equal to the lesser of seventy-five percent of the tax imposed by the tribe on the receipts from the transaction or seventy-five percent of the 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 distribution of those taxes pursuant to Section 7-1-6.1 NMSA 1978.

B. A qualifying gross receipts, sales or similar tax levied by the tribe 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 tribe;

(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 the tribe;

(4) provides a credit against the tribe's tax equal to the lesser of twenty-five percent of the tax imposed by the tribe on the receipts from the transactions or twenty-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 the local option gross receipts taxes imposed on the receipts from the same transactions; and

(5) is subject to a cooperative agreement between the tribe and the secretary entered into pursuant to Section 9-11-12.1 NMSA 1978 and in effect at the time of the taxable transaction.

C. For purposes of the tax credit allowed by this section:

(1) "pueblo" means the Pueblo of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana,

Santa Clara, Santo Domingo, Taos, Tesuque, Zia or Zuni or the nineteen New Mexico pueblos acting collectively;

(2) "tribal land" means all land that is owned by a tribe located within the exterior boundaries of a tribe's reservation or grant and all land held by the United States in trust for that tribe; and

(3) "tribe" means a pueblo, the Jicarilla Apache Nation or the Mescalero Apache Tribe."

Section 2. Section 9-11-12.1 NMSA 1978 (being Laws 1997, Chapter 64, Section 1, as amended) is amended to read:

"9-11-12.1. TRIBAL COOPERATIVE AGREEMENTS.--

A. The secretary may enter into cooperative agreements with the Pueblos of Acoma, Cochiti, Jemez, Isleta, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia and Zuni; the Jicarilla Apache Nation; the Mescalero Apache Tribe; and with the nineteen pueblos acting collectively 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 a tribe 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 to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due a tribe and for the receipt of money collected by a tribe 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 tribe, 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 a tribe to tax persons or transactions that federal law prohibits that government from taxing or as authorizing a state or tribal 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 tribe. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or a tribe 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 tribe.

E. As used in this section:

(1) "tribal" means of or pertaining to a tribe; and

(2) "tribe" means an Indian nation, tribe or pueblo located entirely in New Mexico."

Section 3. REPEAL.--Section 7-9-88 NMSA 1978 (being Laws 1997, Chapter 64, Section 2) is repealed.

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 602, AS AMENDED

CHAPTER 415

CHAPTER 415, LAWS 2003

AN ACT

RELATING TO INSURANCE; CHANGING THE NONFORFEITURE INTEREST RATE ON DEFERRED ANNUITIES.

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

Section 1. Section 59A-20-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 398) is amended to read:

"59A-20-33. STANDARD NONFORFEITURE LAW-INDIVIDUAL DEFERRED ANNUITIES.--

A. This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1986, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced or reversionary annuity, nor to any contract that shall be delivered outside this state through an agent or other representative of the insurer issuing the contract.

B. In the case of contracts issued on or after the operative date of this section as defined in Subsection L of this section, no contract of annuity, except as stated in Subsection A of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the superintendent are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:

(1) that upon cessation of payment of considerations under a contract or upon the written request of the contract owner, the insurer shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in Subsections D, E, F, G and I of this section;

(2) if a contract provided for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in Subsections D, E, G and I of this section. The insurer may reserve the right to defer the payment of such cash surrender benefit for a period not to exceed six months after demand therefor with surrender of the contract after making written request and receiving written approval of the superintendent. The request shall address the necessity and equitability to all policyholders of the deferral;

(3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and

(4) a statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from prior considerations paid would be less than twenty dollars (\$20.00) monthly, the insurer may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

C. The minimum values as specified in Subsections D, E, F, G and I of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in Paragraph (2) of Subsection C of this section of

the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of Subparagraphs (a) through (d):

(a) any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in Paragraph (2) of Subsection C of this section;

(b) an annual contract charge of fifty dollars (\$50.00), accumulated at rates of interest as indicated in Paragraphs (2) of Subsection C of this section;

(c) any premium tax paid by the insurer for the contract, accumulated at rates of interest as indicated in Paragraph (2) of Subsection C of this section; and

(d) the amount of any indebtedness to the insurer on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year.

(2) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(a) the five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest one-twentieth percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date pursuant to Subparagraph (d) of Paragraph 2 of Section C of this section;

(b) reduced by one hundred twenty-five basis points;

(c) where the resulting interest rate is not less than one percent; and

(d) the interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

(3) Notwithstanding the provisions of Paragraphs (1) and (2) of Subsection C of this section, during the period or term that a contract provides

substantive participation in an equity indexed benefit, it may increase the reduction described in Subparagraph (b) of Paragraph (2) of Subsection C of this section by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The superintendent may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the superintendent, the superintendent may disallow or limit the additional reduction.

(4) The superintendent may adopt rules to implement the provisions of Paragraph (3) of Subsection C of this section and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the superintendent determines adjustments are justified.

D. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

E. For contracts that provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit that would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

F. For contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts that do not provide any death benefits prior to the commencement of any annuity payments, such

present values shall be calculated on the bases of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

G. For the purpose of determining the benefits calculated under Subsections E and F of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

H. Any contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

I. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

J. For any contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of Subsections D, E, F, G and I of this section, additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

K. The superintendent may adopt rules to implement the provisions of this section.

L. After July 1, 2003, an insurer may elect to apply its provisions to annuity contracts on a contract-form

by contract-form basis before July 1, 2005. In all other

instances this section shall become operative with respect to annuity contracts issued by the insurer after June 30, 2005."

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 658

CHAPTER 416

CHAPTER 416, LAWS 2003

AN ACT

RELATING TO UTILITIES; ESTABLISHING LIMITS ON RURAL ELECTRIC COOPERATIVES INVESTMENTS IN SUBSIDIARY BUSINESSES; REMOVING REQUIRED PUBLIC REGULATION COMMISSION APPROVAL ON CERTAIN FEDERAL LOANS ALREADY APPROVED BY A FEDERAL AGENCY; REPEALING THE REPEAL OF CERTAIN LAWS PERTAINING TO UTILITIES.

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

Section 1. A new section of the Rural Electric Cooperative Act is enacted to read:

"SUBSIDIARY BUSINESS ACTIVITIES.-- A. Cooperatives may form, organize, acquire, hold, dispose of and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products and telecommunications and communications services and products, including cable and satellite television and water and wastewater collection and treatment, without prior approval from the public regulation commission so long as those other business entities meet all of the following conditions:

(1) the subsidiary is not financed with loans from the federal rural utilities service of the United States department of agriculture or the United States department of agriculture or with similar financing from any successor agency. This limitation shall not apply to rural utilities service loans or United States department of agriculture loans, or loans from successor agencies, to the extent the loan is to be used for a purpose authorized by the lending agency;

(2) the subsidiary fully compensates the cooperative for the use of personnel, services, equipment, tangible property and the cooperative's fully distributed

costs, including all direct and indirect costs and the cost of capital incurred in providing the personnel, services, equipment or tangible property in question;

(3) the total investments, loans, guarantees and pledges of assets of a cooperative in all of its subsidiaries shall not exceed twenty percent of the cooperative's assets; and

(4) the subsidiary agrees to not offer any service or product to the public until it has obtained federal and state regulatory approvals, if any, required to provide the service or product to the public.

B. A director, or spouse of a director, of a cooperative may not be employed or have any financial interest in a separate business entity formed, organized, acquired, held or operated by that cooperative pursuant to the provisions of this section.

C. Should the public regulation commission, upon complaint showing reasonable grounds for investigation, find after investigation and public hearing that the charges for the transactions between the cooperative and other business entity do not conform with the provisions of this section, the public regulation commission is authorized to direct the cooperative to adjust those charges to comply with the provisions of this section. If the cooperative does not comply with the public regulation commission's directive, the public regulation commission is authorized to direct the cooperative to divest its interest in the other business entity. For purposes of enforcing this section, members of the public regulation commission, and the public regulation commission staff, are authorized to inspect the books and records of such other business entities and the cooperatives, provided that proprietary or confidential data or information of the separate business entities shall not be disclosed to a third party. The public regulation commission shall adopt rules and reporting requirements to enforce the provisions of this section.

D. Nothing in this section grants the public regulation commission the power to regulate a generation and transmission cooperative referred to in Section 62-6-4 NMSA 1978."

Section 2. Section 62-6-6 NMSA 1978 (being Laws 1941, Chapter 84, Section 18, as amended) is amended to read:

"62-6-6. ISSUANCE, ASSUMPTION OR GUARANTEE OF SECURITIES.--

A. The power of a public utility to issue, assume or guarantee securities and to create liens on its property situated within this state is a special privilege subject to the supervision and control of the commission as set forth in the Public Utility Act.

B. Except as provided in Subsection E of this section, a public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock

certificates and may issue, assume or guarantee other securities payable at periods of more than eighteen months after the date thereof for the following purposes only:

- (1) making loans or grants from the proceeds of federal loans for economic development projects benefiting its service area;
- (2) the acquisition of property;
- (3) the construction, completion, extension or improvement of its facilities;
- (4) the improvement or maintenance of its service;
- (5) the discharge or lawful refunding of its obligations; or
- (6) the reimbursement of money actually expended for purposes set forth in this subsection from income or from any other money in the treasury not secured by or obtained from the issue, assumption or guarantee of securities, within five years next prior to the filing of an application with the commission for the required authorization.

C. Notwithstanding the provisions of Subsection B of this section, the commission may authorize issuance by a public utility of shares of stock of any class as a dividend on outstanding shares of stock of the public utility of any class and may authorize the issuance of the same or a different number of shares of stock of any class in exchange for outstanding shares of stock of any class of the public utility, and the public utility may issue the stock so authorized.

D. The commission shall not authorize a borrowing under the provisions of Paragraph (1) of Subsection B of this section unless the governing board has approved the borrowing by a two-thirds' majority vote of the members present at a special meeting called for that purpose. The commission shall review the terms of the economic development loan or grant to ascertain the adequacy of any collateral, to have the right to inspect books and review the level of co-participation by the borrower or grantee.

E. Commission approval is not required for the issuance, assumption or guarantee of any security of a public utility whose securities are subject to oversight and approval by the federal government pursuant to the Rural Electrification Act of 1936, as amended, or any successor law to that act."

Section 3. Section 62-6-8.1 NMSA 1978 (being Laws 1979, Chapter 50, Section 1) is amended to read:

"62-6-8.1. ADDITIONAL JURISDICTION.--Except as provided in Subsection E of Section 62-6-6 NMSA 1978 and notwithstanding any other provision of Sections 62-6-1 through 62-6-11 NMSA 1978, the commission shall have jurisdiction over and may

regulate, by general order or regulation, securities of a public utility incorporated under the laws of this state that would otherwise be exempt from regulation by the commission pursuant to Section 62-6-6 NMSA 1978 or Subsection A of Section 62-6-8 NMSA 1978 and that is subject to regulation pursuant to 16 USC 824."

Section 4. Section 62-8-7 NMSA 1978 (being Laws 1991, Chapter 251, Section 1, as amended) is amended to read:

"62-8-7. CHANGE IN RATES.--

A. At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.

B. Unless the commission otherwise orders, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect and other information as the commission by rule requires. The utility shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.

C. Whenever there is filed with the commission by any public utility a complete application as prescribed by commission rule proposing new rates, the commission may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months. The commission shall hear and decide cases with reasonable promptness. The commission shall adopt rules identifying criteria for various rate and tariff filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.

D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the utility for the service in question and shall fix the rates by order to be served upon the utility or the commission by its order shall direct the utility to file new rates respecting such service that are designed to produce annual revenues no greater than those determined by the commission in its order to be just and reasonable. Those rates shall thereafter be observed until changed, as provided by the Public Utility Act.

E. Except as otherwise provided by law, any increase in rates or charges for the utility commodity based upon cost factors other than taxes or cost of fuel, gas or purchased power, filed for after April 4, 1991, shall be permitted only after notice and hearing as provided by this section. The commission shall enact rules governing the use of tax, fuel, gas or purchased power adjustment clauses by utilities that enable the commission to consider periodically at least the following:

(1) whether the existence of a particular adjustment clause is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes;

(2) the specific adjustment mechanism to recover tax, gas, fuel or purchased power costs;

(3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

(4) the proper adjustment period to be employed.

F. The commission may eliminate or condition a particular adjustment clause if it finds such elimination or condition is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes; provided, however, that no such elimination or condition shall be ordered unless such elimination or condition will not place the affected utility at a competitive disadvantage. The commission rules shall also provide for variances and may provide for separate examination of a utility's adjustment clause based upon that utility's particular operating characteristics.

G. Whenever there is filed with the commission a schedule proposing new rates by a rural electric cooperative organized under the Rural Electric Cooperative Act, the rates shall become effective as proposed by the rural electric cooperative without a hearing. However, the cooperative shall give written notice of the proposed rates to its affected patrons at least thirty days prior to the filing with the commission, and the commission shall suspend the rates and conduct a hearing concerning the reasonableness of any proposed rates filed by a rural electric cooperative pursuant to Subsections C and D of this section upon the filing with the commission of a protest setting forth grounds for review of the proposed rates signed by one or more members of the rural electric cooperative and if the commission determines there is just cause for reviewing the proposed rates on one or more of the grounds of the protest. The protest shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. The hearing and review shall be limited to the issues set forth in the protest and for which the commission may find just cause for the review,

which issues shall be contained in the notice of hearing. The provisions of this subsection shall not be construed to affect commission authority or procedure to regulate the sale, furnishing or delivery by wholesale suppliers of electricity to rural electric cooperatives pursuant to Section 62-6-4 NMSA 1978. In addition to the adjustments permitted by Subsections E and F of this section, the commission may authorize rate schedules of rural electric cooperatives to recover, without notice and hearing, changes in the cost of debt capital incurred pursuant to securities that are lawfully issued. For the purposes of this subsection, a member of a rural electric cooperative is a member as defined by the Rural Electric Cooperative Act."

Section 5. REPEAL.--Laws 1998, Chapter 108, Section 82, as amended by Laws 2000, Chapter 88, Section 3, is repealed.

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

SENATE BILL 464, AS AMENDED

CHAPTER 417

CHAPTER 417, LAWS 2003

AN ACT

RELATING TO MUNICIPALITIES; AUTHORIZING CERTAIN MUNICIPALITIES TO IMPOSE A HOSPITALITY FEE ON TOURIST ACCOMMODATIONS FOR CONVENTION CENTER IMPROVEMENTS AND TOURISM MARKETING AND PROMOTION.

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

Section 1. SHORT TITLE.--This act may be cited as the "Hospitality Fee Act".

Section 2. DEFINITIONS.--As used in the Hospitality Fee Act:

A. "gross rent" means the total amount of rent paid for tourist accommodations, not including the state and local option gross receipts taxes paid on the rent receipts;

B. "municipality" means a municipality located in a class A county with a population greater than two hundred fifty thousand according to the most recent federal decennial census;

C. "person" means a corporation, firm, other body corporate, partnership, association or individual, including an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" does not include the United States of America; the state of New Mexico; any corporation, department, instrumentality or agency of the federal government or the state government; or any political subdivision of the state;

D. "proprietor" means a person who furnishes tourist accommodations to a renter;

E. "rent" means the consideration received by a proprietor in money, credits, property or other consideration valued in money from renters for tourist accommodations, other than:

(1) consideration received from a renter who has been a permanent resident of the tourist accommodation for a period of at least thirty consecutive days or a renter who enters into or has entered into a written agreement for rental of the tourist accommodation for a period of at least thirty consecutive days; or

(2) consideration received from a renter for a room or other unit of accommodation for which the renter has paid less than two dollars (\$2.00) per day;

F. "renter" means a person to whom tourist accommodations are furnished;

G. "room" means a room or other unit of accommodation furnished by a proprietor to a renter in a tourist accommodation; and

H. "tourist accommodation" means a hotel, apartment, apartment hotel, apartment house, lodge, lodginghouse, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for accommodation. "Tourist accommodation" does not include:

(1) accommodations at religious, charitable, educational or philanthropic institutions, including summer camps operated by such institutions;

(2) clinics, hospitals or other medical facilities;

(3) privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or

(4) accommodations that do not have at least three rooms or other units of accommodation.

Section 3. HOSPITALITY FEE AUTHORIZED--RATE--PURPOSE.--

A. A municipality may impose by ordinance a hospitality fee on the gross rent received by proprietors of tourist accommodations within the municipality in an amount not to exceed one percent of the gross rent. The fee imposed by this subsection may be referred to as the "hospitality fee".

B. Proceeds from the hospitality fee shall be used as follows:

(1) fifty percent of the proceeds shall be used to equip and furnish a municipal convention center; and

(2) fifty percent of the proceeds shall be used by the municipality to contract to purchase advertising that publicizes and promotes tourist-related attractions, facilities and events in the municipality and the county and tourist facilities or attractions within the area.

Section 4. COLLECTION OF HOSPITALITY FEE--AUDIT.--

A. Every proprietor of a tourist accommodation in a municipality imposing a hospitality fee shall collect the hospitality fee on behalf of the municipality and shall act as a trustee of the fee revenues. The fee shall be collected from proprietors in accordance with the ordinance imposing the fee and shall be charged separately from the rent fixed by the proprietor for the tourist accommodations.

B. The governing body of a municipality imposing a hospitality fee shall select for annual random audits one or more proprietors or tourist accommodations subject to the fee to verify the amount of gross rent subject to the fee and to ensure that the full amount of the fee on that rent is collected. Copies of audits completed shall be filed annually with the local government division of the department of finance and administration.

Section 5. FINANCIAL REPORTING.--The governing body of a municipality imposing a hospitality fee shall:

A. furnish to any municipal advisory board dealing with occupancy, lodging or accommodation taxes or fees information on that portion of a proposed budget report or audit filed or received by the governing body pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act that relates to the expenditure of hospitality fee proceeds within ten days of the filing or receipt of that proposed budget, report or audit; and

B. report quarterly to the local government division of the department of finance and administration on the expenditure of hospitality fee proceeds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978.

Section 6. ORDINANCE REQUIREMENTS.--The ordinance imposing a hospitality fee and, as applicable, any ordinance amending the fee, shall:

A. set out the procedures for licensing a proprietor and for suspending or revoking a license or refusing to license a proprietor after the governing body of the municipality has given the proprietor an opportunity for a public hearing on the suspension, revocation or refusal;

B. state the rate of the hospitality fee; the time, place and method for the payment of the fee to the municipality; the accounts and other records to be maintained in connection with the fee; a procedure for making refunds and resolving disputes relating to the fee; the procedure for preservation and destruction of records pertaining to the fee and their inspection and investigation; audit requirements; applicable civil and criminal penalties; and a procedure for liens, distraint and sales to satisfy such liens; and

C. clearly state any other rights, privileges, powers, immunities and other details relating to proprietor licensure, the collection of the hospitality fee and the remittance of the fee proceeds to the municipality.

Section 7. COLLECTION OF DELINQUENCIES--CIVIL PENALTY.--

A. A proprietor is liable for the payment of any amount of the hospitality fee proceeds the proprietor has failed to remit to the municipality.

B. A municipality shall provide by ordinance for a civil penalty for failure to remit the hospitality fee due in an amount equal to the greater of ten percent of the amount of the hospitality fee that was not remitted to the municipality or one hundred dollars (\$100).

C. The municipality may bring an action in law or equity in the district court for the collection of any amount of hospitality fee due, including without limitation penalties on that amount, interest on the unpaid principal amount at a rate of not exceeding one percent a month, the costs of collection and reasonable attorney fees incurred in connection with such an action.

Section 8. LIEN FOR HOSPITALITY FEE--PAYMENT--CERTIFICATE OF LIENS.--

A. The hospitality fee imposed by a municipality constitutes a lien in favor of that municipality upon the personal and real property of the proprietor providing tourist accommodations in that municipality. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

B. Under process or order of court, no person shall sell the property of any proprietor of a tourist accommodation without first ascertaining from the clerk or treasurer of the municipality in which the tourist accommodation is located the amount of any hospitality fee due the municipality. The hospitality fee due the municipality shall be paid from the proceeds of the sale before payment is made to the judgment creditor or to any other person with a claim on the sale proceeds.

C. The clerk or treasurer of the municipality shall furnish upon request to any person a certificate showing the amount of all liens in the records of the municipality against a proprietor of a tourist accommodation pursuant to the Hospitality Fee Act.

Section 9. ENFORCEMENT.--

A. An action to enforce the Hospitality Fee Act may be brought by:

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

(2) a proprietor of a tourist accommodation who is collecting the proceeds of a hospitality fee in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Hospitality Fee Act.

C. The court shall award costs and reasonable attorney fees to the prevailing party in a court action to enforce the provisions of the Hospitality Fee Act.

Section 10. PENALTIES--CRIMINAL.--

A. It is a violation of the municipal ordinance imposing a hospitality fee and providing for collection and administration of the fee pursuant to the Hospitality Fee Act for any proprietor subject to the fee to fail to pay the hospitality fee, to fail to remit the proceeds of the fee to the municipality or to fail to account properly for a tourist accommodation and the proceeds of the fee pertaining to the accommodation.

B. The governing body of the municipality shall provide by ordinance that a violation of an ordinance imposing and providing for collection and enforcement of the hospitality fee pursuant to the Hospitality Fee Act is a misdemeanor subject to a fine of not more than five hundred dollars (\$500) or imprisonment for not more than ninety days, or both.

Section 11. REVENUE BONDS.--

A. Revenue bonds may be issued at any time by a municipality to defray wholly or in part the costs of equipping or furnishing a municipal convention center.

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

(1) the proceeds of the hospitality fee of the municipality after the deduction of the administrative costs pertaining to the fee in an amount not to exceed ten percent of the gross rent fees collected by the municipality in a fiscal year and excluding from the computation of such costs the administrative costs ultimately recovered from delinquent proprietors by civil action as penalties, costs of collection and attorney fees, but not as interest on unpaid principal;

(2) any convention center facility, after provision is made for the payment of the operation and maintenance expenses of the convention center; and

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

C. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act, and the first interest payment may be for any period authorized in that act.

D. Except as otherwise provided in the Hospitality Fee Act, revenue bonds authorized in the Hospitality Fee Act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

Section 12. REFUNDING BONDS.--

A. A municipality having issued revenue bonds pursuant to the Hospitality Fee Act may issue refunding bonds payable from pledged revenues therein authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the municipality may determine, notwithstanding that the revenue sources or the pledge of such revenues, or both, are thereby modified.

B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds, or to any facilities relating thereto; or

(4) for any combination of the foregoing purposes.

C. The interest on any bond refunded shall not be increased to a rate in excess of the rate authorized in the Public Securities Act and shall be paid as authorized in that act.

D. Except as otherwise provided in the Hospitality Fee Act, refunding bonds authorized in the Hospitality Fee Act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

Section 13. DELAYED REPEAL.--The Hospitality Fee Act is repealed effective July 1, 2013.

SENATE BILL 792, AS AMENDED

CHAPTER 418

CHAPTER 418, LAWS 2003

AN ACT

RELATING TO PUBLIC EMPLOYEES; AMENDING THE PUBLIC EMPLOYEES RETIREMENT ACT; PROVIDING FOR PURCHASE OF SERVICE CREDIT OF ONE YEAR BY ANY MEMBER; CHANGING THE PURCHASE COST OF SERVICE CREDIT FOR LEGISLATOR MEMBERS.

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

Section 1. 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 E 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 pursuant to this subsection does not exceed five years reduced by any period of service credit acquired for military service pursuant to 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 a civilian prisoner of war captured while in service to the United States as an employee of the federal government or as an employee of a contractor with the federal government may purchase service credit for the period of internment as a civilian prisoner of war, provided that:

(1) the member provides proof of employment with the federal government or as a contractor to the federal government in a form acceptable to the association;

(2) the member provides proof of the period of internment in a form acceptable to the association;

(3) the member has at least five years of service credit acquired as a result of personal service rendered in the employ of an affiliated public employer;

(4) the aggregate amount of service credit purchased pursuant to this subsection does not exceed five years reduced by any period of service credit acquired for military service pursuant to any other provision of the Public Employees Retirement Act;

(5) service credit may not be purchased for periods of service in internment as a civilian prisoner of war if such periods are used to obtain or increase a benefit from another retirement program; and

(6) the member pays the association the purchase cost determined according to Subsection E of this section.

C. 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 E 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 pursuant to this subsection does not exceed five years.

D. 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 E 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 pursuant to this subsection does not exceed five years.

E. Except for service to be used under a state legislator coverage plan, the purchase cost for each month of credited service purchased pursuant to 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 three times the normal member contribution 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 employers accumulation fund and shall not be paid out of the association in the event of cessation of membership. In no case shall a member be credited with a month of service for less than the purchase cost as defined in this section.

F. A member shall be refunded, upon written request filed with the association, the portion of the purchase cost of credited service purchased pursuant to 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.

G. 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 pursuant to 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 retirement board. Except as provided in Subsection F 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.

H. At any time prior to retirement, any member may purchase service credit in monthly increments, subject to the following conditions:

(1) the member has at least five years of service credit acquired as a result of personal service rendered in the employ of an affiliated public employer;

(2) the aggregate amount of service credit purchased pursuant to this subsection does not exceed one year reduced by any period of service credit acquired for service pursuant to any other provision of the Public Employees Retirement Act;

(3) the member pays full actuarial present value of the amount of the increase in the employee's pension as a consequence of the purchase as determined by the association;

(4) the member pays the full cost of the purchase within sixty days of the date the member is informed of the amount of the payment; and

(5) the purchase of service under this subsection cannot be used to determine the final average salary, the pension factor or the pension maximum."

SENATE BILL 378, AS AMENDED

CHAPTER 419

CHAPTER 419, LAWS 2003

AN ACT

RELATING TO TAXATION; EXTENDING THE RENEWABLE ENERGY PRODUCTION TAX CREDIT TO INCLUDE BIOMASS AS A QUALIFIED ENERGY RESOURCE; CHANGING ELIGIBILITY REQUIREMENTS FOR CERTIFICATION.

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

Section 1. Section 7-2A-19 NMSA 1978 (being Laws 2002, Chapter 59, Section 1) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. A taxpayer that owns a qualified energy generator certified by the energy, minerals and natural resources department is eligible for a tax credit in an amount equal to one cent (\$.01) per kilowatt-hour for the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator using a qualified energy resource in the taxable year. A taxpayer shall be eligible for the tax credit for ten consecutive years, beginning on the date the qualified energy generator begins producing electricity. The tax credit provided in this section may be referred to as the "renewable energy production tax credit".

B. As used in this section:

(1) "biomass" means agricultural or animal waste; thinnings from trees less than fifteen inches in diameter, slash and brush; lumbermill or sawmill residues; and salt cedar and other phreatophytes removed from watersheds or river basins;

(2) "qualified energy generator" means a facility with at least ten megawatts generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells that electricity to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions

technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

- (a) solar light;
- (b) solar heat;
- (c) wind; or
- (d) biomass.

C. A taxpayer may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the applicant is a qualified energy generator; provided that the department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified will not exceed two million megawatt-hours. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the applicant is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

D. To claim a renewable energy production tax credit, a taxpayer that has been certified as eligible pursuant to Subsection C of this section shall submit to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, documentation of the amount of electricity produced by the taxpayer's facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

E. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain its original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired.

F. The renewable energy production tax credit may be deducted from the taxpayer's New Mexico corporate income tax liability for the taxable year. If the amount of the tax credit claimed exceeds the taxpayer's corporate income tax liability, the excess may be carried forward for up to five consecutive taxable years."

HOUSE BILL 146, AS AMENDED

CHAPTER 420

CHAPTER 420, LAWS 2003

AN ACT

RELATING TO THANATOPRACTICE; CLARIFYING SECTIONS OF THE THANATOPRACTICE ACT; PROVIDING FOR CIVIL PENALTIES FOR UNLICENSED PRACTICE OF THANATOPRACTICE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 61-32-4 NMSA 1978 (being Laws 1993, Chapter 204, Section 4) is amended to read:

"61-32-4. LICENSE REQUIRED.--

A. Unless licensed to practice under the Thanatopractice Act, a person shall not:

(1) practice as a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern or direct disposer;

(2) use the title or represent himself as a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern or direct disposer or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern or direct disposer; or

(3) maintain, manage or operate a funeral establishment, a commercial establishment, a direct disposition establishment or a crematory.

B. A person who engages in the practice or acts in the capacity of a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern or direct disposer in this state, with or without a New Mexico license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Thanatopractice Act.

C. A person who maintains, manages or operates a funeral establishment, commercial establishment, direct disposition establishment or a crematory in this state, with or without a New Mexico establishment or crematory license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Thanatopractice Act."

Section 2. Section 61-32-8 NMSA 1978 (being Laws 1993, Chapter 204, Section 8, as amended) is amended to read:

"61-32-8. INSPECTION--ACCESS--COUNSEL.--

A. Inspection of establishments and crematories, including all records, financial or otherwise, is authorized during regular business hours. Acceptance of a license shall include permission for the board or its designee to enter the premises without legal process.

B. An establishment or crematory shall maintain business records required by law or rule at the establishment or crematory.

C. The board shall be represented by the attorney general. The board may employ special counsel, upon approval of the attorney general, to review and prosecute cases of consumer complaints against any person, establishment or crematory licensed pursuant to the Thanatopractice Act. Payment for the services shall be by the board."

Section 3. Section 61-32-9 NMSA 1978 (being Laws 1993, Chapter 204, Section 9, as amended) is amended to read:

"61-32-9. REQUIREMENTS FOR LICENSURE--FUNERAL SERVICE PRACTITIONER--FUNERAL SERVICE INTERN--DIRECT DISPOSER--ASSOCIATE FUNERAL SERVICE PRACTITIONER--ASSISTANT FUNERAL SERVICE PRACTITIONER--TEMPORARY LICENSES.--

A. A license to practice as a funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the embalming of at least fifty bodies, making of at least fifty funeral arrangements and the directing of at least fifty funerals;

(3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules;

(4) has not been convicted of unprofessional conduct or incompetency;

(5) has graduated from an institution accredited by the American board of funeral service education or any other successor recognized by the United States office of education for funeral service education; and

(6) has successfully completed at least sixty semester hours of academic and professional instruction in an accredited college or university; provided, however, that an assistant funeral service practitioner need not satisfy the provisions of Paragraphs (5) and (6) of this subsection if the assistant funeral service practitioner has successfully completed examinations required by the board for practice as an associate funeral service practitioner and a funeral service practitioner.

B. A license to practice as a funeral service intern shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has graduated from high school or the equivalent;

(3) has submitted proof of employment and supervision as required by board rules. Except as may be allowed by board rule, a license as a funeral service intern is not ambulatory and is issued for a specific funeral establishment only;

(4) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and

(5) has not been convicted of unprofessional conduct or incompetency.

C. A license to practice as a direct disposer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has graduated from high school or the equivalent;

(3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and

(4) has not been convicted of unprofessional conduct or incompetency.

D. A license to practice as an assistant funeral service practitioner shall be issued to any person who, prior to June 18, 1993, held a valid license as an assistant funeral service practitioner and who was qualified to receive a renewal license on July 1, 1993.

E. A license to practice as an associate funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) has been licensed as an assistant funeral service practitioner;

(2) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and

(3) has not been convicted of unprofessional conduct or incompetency.

F. The board may adopt by rule requirements for issuing a temporary license that will be valid until the next scheduled board meeting."

Section 4. Section 61-32-10 NMSA 1978 (being Laws 1993, Chapter 204, Section 10, as amended) is amended to read:

"61-32-10. LICENSURE BY CREDENTIALS.--After successful completion of a jurisprudence examination, the board may license an applicant as a funeral service practitioner, provided the applicant possesses a valid license or its equivalent for the practice of funeral service issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation, and provided the applicant has actively practiced five out of the last ten years in another state, territory or foreign nation as a licensed funeral service practitioner or its equivalent."

Section 5. Section 61-32-11 NMSA 1978 (being Laws 1993, Chapter 204, Section 11, as amended) is amended to read:

"61-32-11. LICENSURE OF ESTABLISHMENTS--FUNERAL ESTABLISHMENTS--COMMERCIAL ESTABLISHMENTS--DIRECT DISPOSITION ESTABLISHMENTS--CREMATORIES.--

A. Funeral establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice of funeral service and shall comply with the following minimum requirements:

(a) a chapel shall be present in which funerals may be conducted;

(b) a display room shall be present for displaying caskets and other funeral merchandise; and

(c) a preparation room shall be present with necessary drainage and ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition or transportation; and

(3) a license shall not be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules.

B. Commercial establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a commercial establishment and shall comply with the following minimum requirements:

(a) a preparation room shall be present with the necessary drainage and ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition and transportation; and

(b) an office shall be present for conducting business; and

(3) a license shall not be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules.

C. Direct disposition establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a direct disposer and shall comply with the following minimum requirements:

(a) a room shall be present with necessary drainage and ventilation for housing a refrigeration unit;

(b) a refrigeration unit, thermodynamically controlled with a minimum storage area of twelve and one-half cubic feet per body, shall be present for sheltering of dead human bodies prior to burial or other disposition or transportation;

(c) an office shall be present for conducting business;

(d) necessary supplies for safely handling unembalmed dead human bodies; and

(e) if funeral merchandise is made available, a display room shall be present for displaying caskets and other funeral merchandise; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules.

D. Crematory licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the crematory shall be maintained at a specific location, including a funeral, commercial or direct disposition establishment, primarily devoted to the practice allowed for a crematory and shall comply with the following minimum requirements:

(a) a room shall be present with necessary ventilation for housing a cremation retort;

(b) a cremation retort shall be present for cremating dead human bodies; and

(c) a unit to pulverize cremated dead human bodies shall be present; and

(3) no license shall be issued or renewed by the board unless the crematory is in compliance with the Thanatopractice Act and board rules.

E. The board may adopt by rule additional requirements in the interest of public health, safety and welfare."

Section 6. Section 61-32-18 NMSA 1978 (being Laws 1993, Chapter 204, Section 18) is amended to read:

"61-32-18. COMMERCIAL ESTABLISHMENTS--SCOPE OF PRACTICE--LIMITATIONS.--

A. The scope of practice of a commercial establishment depends on the entity for whom the commercial establishment is acting as an agent and is subject to the following terms and conditions:

(1) when acting under the direction of a licensed funeral establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;

(b) embalm;

(c) provide forwarding services;

(d) provide direct disposition; and

(e) arrange for identification of a dead human body by family members only, prior to disposition or transportation;

(2) when acting under the direction of a licensed direct disposition establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;

(b) embalm only when embalming is required by the place of disposition; and

(c) provide direct disposition; and

(3) when acting under the direction of a school of medicine, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation; and

(b) embalm.

B. A licensed commercial establishment shall not engage in any activity, or act for any entity, not specifically permitted in this section.

C. The licensee in charge shall certify to the board that the establishment will not exceed the scope of practice allowed by law."

Section 7. Section 61-32-19.1 NMSA 1978 (being Laws 1999, Chapter 284, Section 13) is amended to read:

"61-32-19.1. CREMATORY--SCOPE OF PRACTICE--LIMITATIONS.--

A. The scope of practice of a crematory and its crematory authority is limited to cremation of dead human bodies and pulverization of cremains. A crematory and its crematory authority shall act as an agent of licensed funeral, commercial or direct disposition establishments and schools of medicine. A crematory and its crematory authority may:

(1) engage in transportation of dead human bodies to the crematory; and

(2) cremate dead human bodies and pulverize cremains.

B. After completion of the cremation process, if a crematory and its crematory authority have not been instructed by its agent to return the cremains to the person that initiated the cremation services contract or to arrange for the interment, entombment or enichement of the cremains, the crematory authority shall return, or cause to be returned, the cremains to the establishment no later than thirty days after the date of cremation.

C. A crematory and its crematory authority shall maintain a system or process that ensures that any dead human body in the crematory's possession can be specifically identified throughout all phases of the cremation process.

D. A crematory shall keep an accurate record of all cremations performed for a period of not less than seven years.

E. The crematory and its crematory authority shall certify to the board that the crematory will not exceed the scope of practice allowed by law.

F. A licensed crematory shall not engage in any activity not specifically permitted in this section."

Section 8. Section 61-32-20 NMSA 1978 (being Laws 1993, Chapter 204, Section 20, as amended) is amended to read:

"61-32-20. EMBALMING.--

A. All dead human bodies not disposed of within twenty-four hours after death or release or receipt by the establishment or crematory shall be embalmed in accordance with the Thanatopractice Act or stored under refrigeration as determined by board rule, unless otherwise required by regulation of the office of the state medical investigator or the secretary of health or by orders of an authorized official of the office of the state medical investigator, a court of competent jurisdiction or other authorized official.

B. A dead human body shall not be embalmed except by a funeral service practitioner, an associate funeral service practitioner or a funeral service intern under the supervision of a funeral service practitioner.

C. When embalming is not required under the provisions of this section, a dead human body shall not be embalmed without express authorization by the:

- (1) surviving spouse or next of kin;
- (2) legal agent or personal representative of the deceased; or
- (3) person assuming responsibility for final disposition.

D. When embalming is not required and prior to obtaining authorization for the embalming, a dead human body may be washed and other health procedures, including closing of the orifices, may be performed without authorization.

E. When a dead human body is embalmed, the funeral service practitioner or associate funeral service practitioner who embalms the body or the funeral service intern who embalms the body and the funeral service practitioner who supervises the embalming shall, within twenty-four hours after the embalming procedure, complete and sign an embalming case report describing the elapsed time since death, the condition of the remains before and after embalming and the embalming procedures used. The embalming case report shall be kept on file at the establishment for a period of not less than seven years following the embalming.

F. Except as provided in Subsection A of this section, embalming is not required."

Section 9. Section 61-32-22 NMSA 1978 (being Laws 1993, Chapter 204, Section 22, as amended) is amended to read:

"61-32-22. INACTIVE STATUS.--

A. A funeral service practitioner, associate funeral service practitioner or direct disposer who has a current license may request that the license be placed on inactive status. Except as provided in Subsection E of this section, the board shall approve each request for inactive status.

B. A license placed on inactive status may be renewed within a period not to exceed five years following the date the board granted the inactive status.

C. Renewal of an inactive license requires payment of renewal and reinstatement fees as set forth by board rule and compliance with the following requirements:

(1) certification by the licensee that he has not engaged in the practice of funeral service or direct disposition in this state during the inactive status;

(2) compliance with continuing education requirements established by board rule; and

(3) successful completion of an examination, which shall be administered at the discretion of the board, to certify continuing competency.

D. Disciplinary proceedings may be initiated or continued against a licensee who has been granted inactive status.

E. A license shall not be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated."

Section 10. Section 61-32-24 NMSA 1978 (being Laws 1993, Chapter 204, Section 24, as amended) is amended to read:

"61-32-24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

A. The board, in accordance with the procedures set forth in the Uniform Licensing Act, may take disciplinary action against any licensee, temporary licensee or applicant.

B. The board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that the applicant or licensee is guilty of any of the following acts of commission or omission:

(1) conviction of an offense punishable by incarceration in a state penitentiary or federal prison, provided the board receives a copy of the record of conviction, certified to by the clerk of the court entering the conviction, which shall be conclusive evidence of the conviction;

(2) fraud or deceit in procuring or attempting to procure a license;

(3) gross negligence or incompetence;

(4) unprofessional or dishonorable conduct, which includes:

(a) misrepresentation or fraud;

(b) false or misleading advertising;

(c) solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether the solicitation occurs after death or while death is impending, provided that this shall not be deemed to prohibit general advertising;

(d) solicitation or acceptance by a licensee of any commission, bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any cemetery, mausoleum or crematory;

(e) using any funeral merchandise previously purchased, in whole or in part, except for transportation purposes, without prior written permission of the person selecting or paying for the use of the merchandise; and

(f) failing to make disposition of a dead human body in the enclosure or container that was purchased for that purpose by the arrangers;

(5) violation of any of the provisions of the Thanatopractice Act or any rule of the board;

(6) violation of any local, state or federal ordinance, law or regulation affecting the practice of funeral service, direct disposition or cremation, including the Prearranged Funeral Plan Regulatory Law or any regulations ordered by the superintendent of insurance;

(7) willful or negligent practice beyond the scope of the license issued by the board;

(8) refusing to release properly a dead human body to the custody of the person or entity who has the legal right to effect the release, when the authorized cost has been paid;

(9) failure to secure a necessary permit required by law for removal from this state or cremation of a dead human body;

(10) knowingly making a false statement on a certificate of death;

(11) failure to give full cooperation to the board or one of its committees, staff, inspectors, agents or an attorney for the board in the performance of official duties;

(12) has had a license, certificate or registration to practice revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee or applicant similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking the disciplinary action is conclusive evidence of the violation;

(13) failure to supervise adequately subordinate personnel;

(14) conduct unbecoming a licensee or detrimental to the safety or welfare of the public;

(15) employing fraudulent billing practices; or

(16) practicing funeral service, direct disposition or cremation without a current license.

C. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a person who is licensed as or is an applicant for a license as a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or funeral service intern is guilty of any of the following acts of commission or omission:

(1) practicing funeral service without a license or aiding or abetting an unlicensed person to practice funeral service; or

(2) permitting an associate funeral service practitioner, assistant funeral service practitioner or a funeral service intern to exceed the limitations set forth in the provisions of the Thanatopractice Act or the rules of the board.

D. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a direct disposer licensee or applicant or a direct disposition establishment licensee or applicant is guilty of any of the following acts of commission or omission:

(1) embalming, restoring, acting as a cosmetician or in any way altering the condition of a dead human body, except for washing and dressing;

(2) causing a body to be embalmed when embalming is not required by a place of disposition;

(3) prior to interment, entombment or other final disposition of a dead human body, participating in any rites or ceremonies in connection with such final disposition of the body, or providing facilities for any such rites or ceremonies;

(4) reclaiming, transporting or causing to be transported a dead human body after written release for disposition; or

(5) practicing direct disposition without a license or aiding or abetting an unlicensed person to practice direct disposition.

E. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a crematory licensee or applicant or a crematory authority is guilty of any of the following acts of commission or omission:

(1) engaging or holding oneself out as engaging in the practice of funeral service or direct disposition, unless the applicant or crematory authority has a license to practice funeral service or direct disposition;

(2) operating a crematory without a license or aiding and abetting a crematory to operate without a license; or

(3) engaging in conduct or activities for which a license to engage in the practice of funeral service or direct disposition is required or aiding and abetting an unlicensed person to engage in conduct or activities for which a license to practice funeral service or direct disposition is required.

F. Unless exonerated by the board, persons who have been subjected to formal disciplinary sanctions by the board shall be responsible for the payment of costs of the disciplinary proceedings, which include costs for:

(1) court reporters;

(2) transcripts;

(3) certification or notarization;

(4) photocopies;

(5) witness attendance and mileage fees;

(6) postage for mailings required by law;

(7) expert witnesses; and

(8) depositions.

G. All fees, fines and costs imposed on an applicant, licensee, establishment or crematory shall be paid in full to the board before an initial or renewal license may be issued."

Section 11. A new section of the Thanatopractice Act is enacted to read:

"UNLICENSED ACTIVITY--CIVIL PENALTY.--The board may impose a fine as set forth in the Thanatopractice Act on a person who is found to have acted without a license in violation of the Thanatopractice Act by a court or an administrative proceeding as provided for in the Thanatopractice Act."

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 431, AS AMENDED

CHAPTER 421

CHAPTER 421, LAWS 2003

AN ACT

RELATING TO INDEMNIFICATION; MAKING VOID CERTAIN INDEMNIFICATION AGREEMENTS.

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

Section 1. Section 56-7-1 NMSA 1978 (being Laws 1971, Chapter 107, Section 1) is amended to read:

"56-7-1. REAL PROPERTY--INDEMNITY AGREEMENTS--AGREEMENTS VOID.--

A. A provision in a construction contract that requires one party to the contract to indemnify, hold harmless, insure or defend the other party to the contract,

including the other party's employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents, is void, unenforceable and against the public policy of the state.

B. A construction contract may contain a provision that, or shall be enforced only to the extent that, it:

(1) requires one party to the contract to indemnify, hold harmless or insure the other party to the contract, including its officers, employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the indemnitor or its officers, employees or agents; or

(2) requires a party to the contract to purchase a project-specific insurance policy, including an owner's or contractor's protective insurance, project management protective liability insurance or builder's risk insurance.

C. This section does not apply to indemnity of a surety by a principal on any surety bond or to an insurer's obligation to its insureds.

D. As used in this section, "construction contract" means a public, private, foreign or domestic contract or agreement relating to construction, alteration, repair or maintenance of any real property in New Mexico and includes agreements for architectural services, demolition, design services, development, engineering services, excavation or other improvement to real property, including buildings, shafts, wells and structures, whether on, above or under real property.

E. As used in this section, "indemnify" or "hold harmless" includes any requirement to name the indemnified party as an additional insured in the indemnitor's insurance coverage for the purpose of providing indemnification for any liability not otherwise allowed in this section."

Section 2. Section 56-7-2 NMSA 1978 (being Laws 1971, Chapter 205, Section 1, as amended) is amended to read:

"56-7-2. OIL, GAS OR WATER WELLS AND MINERAL MINES--AGREEMENTS, COVENANTS AND PROMISES TO INDEMNIFY VOID.--

A. An agreement, covenant or promise, foreign or domestic, contained in, collateral to or affecting an agreement pertaining to a well for oil, gas or water, or mine for a mineral, within New Mexico, that purports to indemnify the indemnitee against loss or liability for damages arising from the circumstances specified in Paragraph (1), (2) or (3) of this subsection is against public policy and is void:

(1) the sole or concurrent negligence of the indemnitee or the agents or employees of the indemnitee;

(2) the sole or concurrent negligence of an independent contractor who is directly responsible to the indemnitee; or

(3) an accident that occurs in operations carried on at the direction or under the supervision of the indemnitee, an employee or representative of the indemnitee or in accordance with methods and means specified by the indemnitee or employees or representatives of the indemnitee.

B. As used in this section, "agreement pertaining to a well for oil, gas or water, or mine for a mineral" means an agreement:

(1) concerning any operations related to drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, altering, plugging or otherwise rendering services in connection with a well drilled for the purpose of producing or disposing of oil, gas or other minerals or water;

(2) for rendering services in connection with a mine shaft, drift or other structure intended for use in the exploration for or production of a mineral; or

(3) to perform a portion of the work or services described in Paragraph (1) or (2) of this subsection or an act collateral thereto.

C. A provision in an insurance contract indemnity agreement naming a person as an additional insured or a provision in an insurance contract or any other contract requiring a waiver of rights of subrogation or otherwise having the effect of imposing a duty of indemnification on the primary insured party that would, if it were a direct or collateral agreement described in Subsections A and B of this section, be void, is against public policy and void.

D. Nothing in this section:

(1) deprives an owner of the surface estate of the right to secure indemnity from a lessee, operator, contractor or other person conducting operations for the exploration of minerals on the owner's land; or

(2) affects the validity of a benefit conferred by the Workers' Compensation Act."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 433, AS AMENDED

CHAPTER 422

CHAPTER 422, LAWS 2003

AN ACT

RELATING TO LICENSING; REVISING THE COUNSELING AND THERAPY PRACTICE ACT.

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

Section 1. Section 61-9A-3 NMSA 1978 (being Laws 1993, Chapter 49, Section 3, as amended) is amended to read:

"61-9A-3. DEFINITIONS.--As used in the Counseling and Therapy Practice Act:

A. "accredited institution" means a university or college accredited by a regional accrediting agency of institutions of higher education;

B. "alcohol abuse counselor" means a person who engages in the practice of alcohol abuse counseling;

C. "alcohol and drug abuse counselor" means a person who engages in the practice of alcohol and drug abuse counseling;

D. "appraisal" means selecting, administering, scoring and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, personal characteristics and current emotional or mental state by appropriately educated, trained and experienced clinicians and the use of nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to or changing life situations of a physical, mental or emotional nature; "appraisal" shall not be construed to permit the performance of any act that counselors or therapists are not educated, trained and licensed to perform;

E. "appropriate supervision" means supervision as defined by rule, provided by a licensed professional clinical mental health counselor, licensed professional mental health counselor, licensed marriage and family therapist, licensed professional art therapist, licensed psychiatrist, licensed clinical psychologist, licensed alcohol and drug abuse counselor with three years of alcohol and drug abuse experience acquired after licensure, clinical nurse specialist in psychiatry or licensed independent social worker with two years of mental health and supervised clinical experience;

F. "appropriate clinical supervision" means supervision provided to licensed mental health counselors or therapists by a licensed professional clinical mental health counselor, licensed marriage and family therapist, licensed professional art therapist, licensed psychiatrist, licensed clinical psychologist, clinical nurse specialist in psychiatry or licensed independent social worker;

G. "board" means the counseling and therapy practice board;

H. "client contact hours" means the face-to-face time spent with a client to appraise, assess, evaluate, diagnose, treat psychopathology and provide counseling services;

I. "clinical counseling" means the rendering of counseling services involving the application of principles of psychotherapy, human development, learning theory, diagnosis, treatment and the etiology of mental illness and dysfunctional behavior to individuals, couples, families or groups for the purpose of assessing and treating psychopathology and promoting optimal mental health;

J. "consulting" and "consultation" means the voluntary, nonsupervisory relationship between professionals or other pertinent persons, in application of scientific counseling, guidance and human development principles and procedures to provide assistance in understanding and resolving a current or potential problem that the consultee may have in relation to a third party be it an individual, group, family or organization;

K. "counselor training and education" means a process that prepares counselors in both didactic and clinical aspects of counseling;

L. "course" means an integrated, organized course of study, which encompasses a minimum of one school semester or equivalent hours;

M. "counseling" means the application of scientific principles and procedures in therapeutic counseling, guidance and human development to provide assistance in understanding and solving a mental, emotional, physical, social, moral, educational, spiritual or career development and adjustment problem that a client may have;

N. "counseling-related field" means to include those fields in which training includes coursework in the diagnosis and treatment of mental disorders; guidance counseling, mental health-community counseling or agency counseling; clinical psychology, counseling psychology; human and family studies; art therapy and art education with appropriate clinical background to meet the clinical core curriculum;

O. "counseling and therapy practice" means the licensed or registered practice of professional art therapy, professional clinical mental health counseling, professional mental health counseling, independent mental health counseling, marriage

and family therapy, alcohol abuse counseling, drug abuse counseling and alcohol and drug abuse counseling;

P. "counselor and therapist practitioner" means a professional art therapist, professional clinical mental health counselor, professional mental health counselor, licensed mental health counselor, marriage and family therapist, registered mental health counselor, registered independent mental health counselor, licensed substance abuse trainee, alcohol abuse counselor, drug abuse counselor and alcohol and drug abuse counselor;

Q. "department" means the regulation and licensing department or the division of the department designated to administer the counseling and therapy practice board;

R. "diagnosis and treatment planning" means assessing, analyzing and providing diagnostic descriptions of mental, emotional or behavioral conditions; exploring possible solutions; and developing and implementing a treatment plan for mental, emotional and psychosocial adjustment or development. "Diagnosis and treatment planning" shall not be construed to permit the performance of any act that counselors are not educated, trained and licensed to perform;

S. "drug abuse counselor" means a person who engages in the practice of drug abuse counseling;

T. "evaluation" means the act of making informed decisions based on the use and analysis of pertinent data;

U. "internship" means a distinctly defined, pre-graduate, supervised, capstone clinical experience in which the student refines and enhances basic counseling or student development knowledge and skills; integrates and authenticates professional knowledge and skills appropriate to the student's program and preparation for postgraduate professional placement;

V. "licensed mental health counselor" means a person who is licensed by the board and is authorized by the board to engage in the practice of mental health counseling under appropriate supervision;

W. "licensure" means the process by which a state agency or government grants permission to an individual to engage in a given profession and to use the designated title of that profession after the applicant has attained the minimal degree of competency necessary to ensure that the public health, safety and welfare are reasonably well protected;

X. "marriage and family therapy" means the assessment, diagnosis and treatment of nervous and mental disorders, whether cognitive, affective or behavioral, within the context of marriage and family systems;

Y. "marriage and family therapist" means a person who is licensed for independent practice of marriage and family therapy without supervision;

Z. "mental disorder" means any of several conditions or disorders that meet the diagnostic criteria contained in the diagnostic and statistical manual of the American psychiatric association or the world health organization's international classification of diseases manual;

AA. "peer counselor" means a non-licensed service provider;

BB. "practice of alcohol or drug abuse counseling" means the licensed practice of counseling services, as defined by rule of the board, to individuals, couples, families or groups. The services may include screening, assessment, consultation, development of treatment plans, case management, counseling, referral, appraisal, crisis intervention, education, reporting and recordkeeping;

CC. "practice of art therapy" means the licensed practice of counseling services to individuals, families or groups of services that use art media as a means of expression and communication to promote perceptive, intuitive, affective and expressive experiences that alleviate distress, reduce physical, emotional, behavioral and social impairment and lead to growth or reintegration of one's personality. Art therapy services include diagnostic evaluation, development and implementation of patient treatment plans, goals and objectives, case management services and therapeutic treatment as defined by rule of the board;

DD. "practice of marriage and family therapy" means the licensed practice of marriage and family therapy services delivered to individuals, couples and families treated singly or in groups, for a cognitive behavioral, emotional or relationally disruptive issue or a diagnosed mental or physical disorder in at least one member of the couple or family being treated. The "practice of marriage and family therapy" involves the professional application of psychotherapeutic, human development and family systems theories and techniques in a therapeutic relationship to bring about change, and includes the services of diagnostic evaluation, development and implementation of patient treatment plans, goals and objectives, case management services, therapeutic treatment, research, appraisal, consulting and referral as defined by rule of the board;

EE. "practice of professional clinical mental health counseling" means the licensed practice of mental health clinical counseling to individuals, couples, families or groups and the diagnosis and treatment of mental and emotional disorders as defined by the diagnostic and statistical manual of mental disorders of the world health organization. "Practice of professional clinical mental health counseling" includes diagnostic evaluation, development and implementation of patient treatment plans, goals and objectives, case management services, therapeutic treatment, research and clinical mental health appraisal, consulting, counseling and referral as defined by rule of the board;

FF. "practice of professional mental health counseling" means the licensed practice of a therapeutic, non-clinical counseling service that integrates a wellness and multicultural model of human behavior involving certain methods and techniques of appraisal, including consulting, counseling and referral as defined by rule of the board;

GG. "practice of registered mental health counseling" or "practice of licensed mental health counseling" means the registered or licensed practice, under appropriate supervision, of a therapeutic counseling service that integrates a wellness and multicultural model of human behavior involving certain methods and techniques of appraisal, including consulting, counseling and referral as defined by rule of the board;

HH. "practice of registered independent mental health counseling" means the registered independent practice of a therapeutic counseling service that integrates a wellness and multicultural model of human behavior involving certain methods and techniques of appraisal, including consulting, counseling and referral as defined by rule of the board;

II. "practicum" means a distinctly defined, supervised clinical experience in which the student develops basic counseling skills and integrates professional knowledge. Practicum is completed prior to internship;

JJ. "program" means a structured sequence of curricular and clinical experiences housed within an academic unit;

KK. "professional art therapist" means a licensed person who engages in the practice of art therapy without supervision;

LL. "professional clinical mental health counselor" means a licensed person who engages in the independent practice of professional clinical mental health counseling without supervision;

MM. "professional mental health counselor" means a licensed person who engages in the practice of professional mental health counseling without supervision; however, professional mental health counselors may diagnose and treat under appropriate supervision;

NN. "referral" means evaluating and identifying the needs of a client to determine the advisability of referrals to other specialists, advising the counselee of such judgements and communicating as requested or deemed appropriate to such referral sources;

OO. "research" means a systematic effort to collect, analyze and interpret quantitative or qualitative data that describe how social characteristics, behavior, emotions, cognition, disabilities, mental disorders and interpersonal transactions among individuals, couples, families and organizations interact;

PP. "registered independent mental health counselor" means a person who is registered with the board and is authorized by the board to engage in the practice of mental health counseling without supervision;

QQ. "standard" means a minimal criterion that must be met;

RR. "substance abuse counselor" means a person who is licensed to practice alcohol and drug abuse counseling;

SS. "substance abuse trainee" means a person who is licensed to practice under appropriate supervision defined by rule; and

TT. "supervision" means a tutorial and mentoring form of instruction in which a supervisor monitors the student's activities in practicum and internship, or licensees in other clinical situations and facilitates the learning and skill development experiences associated with practicum, internship or other clinical situations. The supervisor monitors and evaluates the clinical work of the student or licensee while monitoring the quality of services offered to clients."

Section 2. Section 61-9A-4 NMSA 1978 (being Laws 1993, Chapter 49, Section 4, as amended) is amended to read:

"61-9A-4. LICENSE OR REGISTRATION REQUIRED.--

A. Unless licensed or registered to practice under the Counseling and Therapy Practice Act, no person shall engage in:

- (1) the practice of professional mental health counseling;
- (2) the practice of professional clinical mental health counseling;
- (3) marriage and family therapy;
- (4) professional art therapy;
- (5) counseling as a licensed mental health counselor;
- (6) counseling as a registered independent mental health counselor; or
- (7) counseling as a registered mental health counselor.

B. Unless licensed to practice under the Counseling and Therapy Practice Act, no person shall engage in:

- (1) the practice of alcohol and drug abuse counseling;

- (2) the practice of alcohol abuse counseling;
- (3) the practice of drug abuse counseling; or
- (4) substance abuse counseling as a substance abuse trainee."

Section 3. Section 61-9A-5 NMSA 1978 (being Laws 1993, Chapter 49, Section 5, as amended) is amended to read:

"61-9A-5. DESCRIPTION OF PRACTICING.--

A. For the purpose of the Counseling and Therapy Practice Act, a person is practicing as a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered independent mental health counselor, registered mental health counselor, licensed mental health counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse trainee if he advertises; offers himself to practice; is employed in a position described as professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered independent mental health counselor, registered mental health counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse counselor trainee; or holds out to the public or represents in any manner that he is licensed or registered to practice as a counselor or therapist enumerated in this section in this state.

B. "Practice of professional clinical mental health counseling, professional art therapist or marriage and family therapist" means the application of mental health, psychotherapeutic and human development principles through a therapeutic relationship to:

(1) achieve the mental, emotional, physical, social, moral, educational, spiritual or career-related development and adjustment of the client throughout the client's life;

(2) diagnose, evaluate, prevent and treat mental, emotional or behavioral disorders and associated distresses that interfere with mental health;

(3) conduct appraisal, assessments and evaluations to establish treatment goals and objectives; and

(4) plan, implement and evaluate treatment plans using counseling treatment interventions and strategies.

C. "Practice of licensed mental health counselor and registered mental health counselor under appropriate supervision" consists of rendering counseling services, which may include evaluation, assessment, consultation, diagnosing under

supervision, development of treatment plans, case management counseling referral, appraisal, crisis intervention education, reporting and recordkeeping to individuals, couples, families or groups as defined by regulation.

D. "Practice of licensed professional mental health counselor" consists of rendering counseling services, which may include evaluation, assessment, diagnoses, consultation, development of treatment plans, case management, counseling, referral, appraisal, crisis intervention education, reporting and recordkeeping to individuals, couples, families or groups as defined by regulation.

E. The scope of practice of alcohol or drug abuse counseling, or both, consists of rendering treatment and intervention services specific to alcohol and other drug use disorders to individuals, couples, families or groups. The services may include evaluation, assessment, diagnosis of chemical abuse and chemical dependency disorders only, consultation, development of treatment plans, case management-counseling, referral, appraisal, crisis intervention, education, reporting and recordkeeping. Nothing in this scope of practice shall be construed as preventing licensed alcohol abuse counselors, drug abuse counselors and alcohol and drug abuse counselors from providing screening and referrals for mental health disorders. However, assessment, treatment and diagnosis for such disorders is not within the scope of practice of this license. The practice of these activities will be limited to the individual's level of training, education and supervised experience.

F. The scope of practice of a substance abuse trainee under the supervision by an appropriate supervisor is limited to supervised work in a public or private institution. The trainee may be involved in taking social histories or conducting home studies. The trainee utilizes the basic problem-solving process of gathering information, assessing that information at a beginning professional level and developing an intervention plan. The trainee may implement the plan and conduct follow-ups pertaining specifically to alcohol and drug abuse counseling. The trainee may provide client education and assist licensed counselor-therapist with group or individual counseling sessions."

Section 4. Section 61-9A-6 NMSA 1978 (being Laws 1993, Chapter 49, Section 6, as amended) is amended to read:

"61-9A-6. EXEMPTIONS.--

A. Nothing in the Counseling and Therapy Practice Act prohibits:

(1) a person who is licensed, certified or regulated under the laws of this state from engaging in activities consistent with the standards and ethics of his profession or practice; or

(2) an alternative, metaphysical or holistic practitioner from engaging in nonclinical activities consistent with the standards and codes of ethics of that practice.

B. Specifically exempted from the Counseling and Therapy Practice Act are:

(1) elementary and secondary school counselors acting on behalf of their employer who are not licensed pursuant to the Counseling and Therapy Practice Act;

(2) peer counselors of domestic violence or independent-living peer counselors;

(3) duly ordained, commissioned or licensed ministers of a church or lay pastoral-care assistants providing pastoral services on behalf of a church;

(4) a person who is enrolled in an internship or practicum under appropriate supervision and is in the internship or practicum for the sole purpose of acquiring an advanced degree in mental health counseling, marriage and family therapy or art therapy or a degree in substance abuse counseling; and

(5) practitioners of Native American healing arts."

Section 5. Section 61-9A-7 NMSA 1978 (being Laws 1993, Chapter 49, Section 7, as amended) is amended to read:

"61-9A-7. BOARD CREATED--MEMBERS--APPOINTMENT--TERMS--COMPENSATION.--

A. There is created the "counseling and therapy practice board". The board is administratively attached to the department.

B. The board consists of nine members who are United States citizens and have been New Mexico residents for at least five years prior to their appointment. Of the nine members:

(1) five members shall be professional members, who shall be a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist, a professional art therapist and an alcohol and drug abuse counselor, licensed under the Counseling and Therapy Practice Act and shall have engaged in a counselor and therapist practice for at least five years. The professional mental health counselor shall also represent the registered independent and licensed mental health counselors; and

(2) four members shall represent the public. The public members shall not have been licensed or have practiced as counselor or therapist practitioners or in any other regulated mental health profession, nor have any significant financial interest, either direct or indirect, in the professions regulated.

C. Members of the board shall be appointed by the governor for staggered terms of four years. A member shall hold office until his successor is appointed. Vacancies shall be filled in the same manner as original appointments. No appointee shall serve more than two terms.

D. The governor may appoint professional board members from a list of nominees submitted by qualified individuals and organizations, including the New Mexico counseling association, the New Mexico association for marriage and family therapy, the New Mexico art therapy association and the alcohol and drug directors association.

E. 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.

F. The board shall elect annually from its membership a chairman and a secretary and other officers as necessary to carry out its duties.

G. The board shall meet at least twice a year and at other times deemed necessary. Other meetings may be called by the chairman upon the written request of three members of the board. A simple majority of the board members shall constitute a quorum of the board.

H. Any member failing to attend three meetings after proper notice shall be automatically recommended for removal as a board member, unless excused by the board chair for one of the following reasons:

(1) extenuating circumstances beyond his control, including illness;

(2) prearranged activities out of town; or

(3) other severe circumstances that do not allow a member to

attend."

Section 6. Section 61-9A-8 NMSA 1978 (being Laws 1993, Chapter 49, Section 8, as amended) is amended to read:

"61-9A-8. DEPARTMENT DUTIES.--The department, with the consultation of the board, shall:

A. process applications and conduct and review the required examinations;

B. issue licenses and certificates of registration to applicants who meet the requirements of the Counseling and Therapy Practice Act;

C. administer, coordinate and enforce the provisions of the Counseling and Therapy Practice Act and investigate persons engaging in practices that may violate the provisions of that act;

D. approve the selection of primary staff assigned to the board;

E. maintain records, including financial records; and

F. maintain a current register of licensees and registrants as a matter of public record."

Section 7. Section 61-9A-9 NMSA 1978 (being Laws 1993, Chapter 49, Section 9, as amended) is amended to read:

"61-9A-9. BOARD--POWERS AND DUTIES.--

A. The board may:

(1) adopt in accordance with the Uniform Licensing Act and file in accordance with the State Rules Act rules necessary to carry out the provisions of the Counseling and Therapy Practice Act;

(2) select and provide for the administration of, at least, semiannual examinations for licensure;

(3) establish the passing scores for examinations;

(4) take any disciplinary action allowed by and in accordance with the Uniform Licensing Act;

(5) censure, reprimand or place a licensee or registrant on probation;

(6) require and establish criteria for continuing education;

(7) establish by rule procedures for receiving, investigating and resolving complaints;

(8) approve appropriate supervision and post-graduate experience for persons seeking licensure or registration;

(9) provide for the issuance of licenses;

(10) determine eligibility of individuals for licensure or registration;

(11) set fees for administrative services, licenses and registration, as authorized by the Counseling and Therapy Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;

(12) establish criteria for supervision and supervisory requirements;

(13) establish a code of ethics; and

(14) establish committees.

B. The board may establish a standards committee for each licensed profession. The members of each standards committee shall be appointed by the board with the consent of the department and shall include at least one board member from the licensed profession and at least one public board member. The board member representing each respective profession shall chair its standards committee and the committee shall:

(1) recommend and periodically review a code of ethics;

(2) review license applications and recommend approval or disapproval;

(3) develop criteria for supervision; and

(4) recommend rules.

C. Members of the standards committees or other committees may be reimbursed as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance."

Section 8. Section 61-9A-10 NMSA 1978 (being Laws 1993, Chapter 49, Section 10, as amended) is amended to read:

"61-9A-10. PROFESSIONAL MENTAL HEALTH COUNSELOR--
REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree in counseling or a counseling-related field, as defined by rule, from an accredited institution;

C. demonstrates professional competency by passing the required examinations prescribed by the board;

D. has completed one thousand client contact hours of postgraduate professional counseling experience under appropriate supervision consisting of at least one hundred supervision hours; and

E. is of good moral character with conduct consistent with the code of ethics."

Section 9. Section 61-9A-11 NMSA 1978 (being Laws 1993, Chapter 49, Section 11, as amended) is amended to read:

"61-9A-11. PROFESSIONAL CLINICAL MENTAL HEALTH

COUNSELOR--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional clinical mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree in a counseling-related field, as defined by rule, from a regionally accredited institution. Effective July 1, 2003, the applicant must have a master's degree and a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the mental health clinical core curriculum;

C. demonstrates professional competency by passing the required examination as prescribed by the board;

D. has a minimum of two years of professional clinical counseling experience, including at least three thousand clinical contact hours and at least one hundred hours of face-to-face supervision. One thousand client clinical contact hours may be submitted from the applicant's internship or practicum; and

E. is of good moral character with conduct consistent with the code of ethics."

Section 10. Section 61-9A-11.1 NMSA 1978 (being Laws 1999, Chapter 161, Section 10) is amended to read:

"61-9A-11.1. PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional clinical mental health counselor to any person who files a completed application

accompanied by the required fees within the July 1, 2000 through July 1, 2004 period and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a grandfathered professional mental health counselor license that was applied for prior to July 1, 1994;

C. holds a master's or doctoral degree and a total of forty-eight graduate semester hours or more or seventy-two quarter hours from a regionally accredited institution;

D. demonstrates professional competency by satisfactorily passing the required examinations as prescribed by the board, or documentation of ten thousand hours of client contact experience, including at least three hundred hours of face-to-face supervision of which at least one hundred hours are individual;

E. has a minimum of five thousand hours of client contact experience, including at least two hundred hours of face-to-face supervision of which one hundred hours are individual; and

F. is of good moral character with conduct consistent with the code of ethics."

Section 11. A new section of the Counseling and Therapy Practice Act, Section 61-9A-11.2 NMSA 1978, is enacted to read:

"61-9A-11.2. PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR-- REQUIREMENTS FOR LICENSING.--The board shall issue a license as a professional clinical mental health counselor to any person who files a completed application accompanied by the required fees within the July 1, 2003 through July 1, 2004 period and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a professional mental health counselor license that was applied for between July 1, 1994 through July 1, 1998;

C. holds a master's or doctoral degree and a total of forty-eight graduate semester hours or seventy-two quarter hours from a regionally accredited institution;

D. demonstrates professional competency by satisfactorily passing the required examinations as prescribed by the board and documents five thousand hours of supervised client contact experience, including at least two hundred hours of face-to-face supervision of which one hundred hours are individual; and

E. is of good moral character with conduct consistent with the code of ethics."

Section 12. Section 61-9A-12 NMSA 1978 (being Laws 1993, Chapter 49, Section 12, as amended) is amended to read:

"61-9A-12. MARRIAGE AND FAMILY THERAPIST--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a marriage and family therapist to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree with a focus in marriage and family therapy and meets the requirements of the core curriculum, as defined by rule, in marriage and family therapy from an accredited institution;

C. demonstrates professional competency by passing the examinations as prescribed by the board;

D. has a minimum of two years of postgraduate marriage and family therapy experience consisting of one thousand client contact hours and two hundred hours of appropriate supervision, of which one hundred hours of such supervision was on an individual basis; and

E. is of good moral character with conduct consistent with the code of ethics."

Section 13. Section 61-9A-13 NMSA 1978 (being Laws 1993, Chapter 49, Section 13, as amended) is amended to read:

"61-9A-13. PROFESSIONAL ART THERAPIST--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional art therapist to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. demonstrates professional competency by passing an examination as prescribed by the board;

C. holds either:

(1) a master's or doctoral degree from a regionally accredited institution or nationally approved art therapy program in art therapy that includes seven hundred hours of supervised internship experience from an accredited institution;

(2) a master's degree in a counseling-related field, as defined by rule, has a minimum of twenty-four semester hours of sequential course work in the history, theory and practice of art therapy and has completed seven hundred hours of supervised internship experience from an accredited institution. The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from non-accredited institutions; or

(3) a master's degree in a counseling-related field, as defined by rule, and completed a minimum of twenty-four semester hours in an art therapy certificated program from a regionally accredited institution or an nationally approved American art therapy association program;

D. has completed one thousand client contact hours of postgraduate face-to-face experience under appropriate supervision beyond the requirements in Paragraphs (1), (2) and (3) of Subsection C of this section. Supervision shall be under a New Mexico licensed professional art therapist or certified board art therapist for at least fifty percent of the working hours; and

E. is of good moral character with conduct consistent with the code of ethics."

Section 14. Section 61-9A-14 NMSA 1978 (being Laws 1993, Chapter 49, Section 14, as amended) is amended to read:

"61-9A-14. REQUIREMENTS FOR LICENSED MENTAL HEALTH COUNSELOR.--The board shall issue a license as a mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds either a master's or doctoral degree from an accredited institution in a counseling-related field, as defined by rule;

C. has arranged for an appropriate supervision plan and a postgraduate experience plan, as defined by rule, to meet the licensing requirements for a:

(1) marriage and family therapist;

(2) professional art therapist;

(3) professional mental health counselor; or

(4) professional clinical mental health counselor;

D. demonstrates professional competence by passing an examination within the applicant's discipline as prescribed by the board; and

E. is of good moral character with conduct consistent with the code of ethics."

Section 15. Section 61-9A-14.1 NMSA 1978 (being Laws 1996, Chapter 61, Section 8, as amended) is amended to read:

"61-9A-14.1. SUBSTANCE ABUSE TRAINEE--REQUIREMENTS FOR LICENSURE.--

A. The board shall license as a substance abuse trainee any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is of good moral character with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) possesses a high school diploma or its equivalent;

(4) has arranged for an appropriate supervision plan, as defined by rule, to meet the requirements for licensure as a substance abuse counselor;

(5) has a total of ninety clock hours of education and training in the fields of alcohol and drug abuse; and

(6) provides three letters of recommendation as established by rule.

B. Effective July 1, 2005, the board shall license as a substance abuse trainee any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is of good moral character, with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) holds an associate degree in a counseling-related field, as defined by rule, from a regionally accredited institution and has a total of ninety clock hours of education and training in the fields of alcohol and drug abuse;

(4) has arranged for an appropriate supervision plan, as defined by rule, to meet the requirements for licensure as a substance abuse trainee; and

(5) provides two letters of recommendation: one letter from a current supervisor and one letter from a current employer or one letter from a professional substance abuse colleague."

Section 16. Section 61-9A-14.2 NMSA 1978 (being Laws 1999, Chapter 161, Section 15) is amended to read:

"61-9A-14.2. ALCOHOL AND DRUG ABUSE COUNSELOR--REQUIREMENTS FOR LICENSURE.--

A. The board shall license as an alcohol and drug abuse counselor a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is of good moral character with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) demonstrates professional competency by passing the required examination prescribed by the board; and

(4) has one of the following combinations of education and experience:

(a) an associate degree, including two hundred seventy-six clock hours of education and training with at least ninety hours in each of the fields of alcohol, drug and counseling and six hours of training in professional ethics, four years of experience in the practice of alcohol and drug abuse counseling under appropriate supervision and three hundred hours of approved practicum;

(b) a baccalaureate degree in a counseling-related field, as defined by rule, from a regionally accredited institution and education or training that includes two hundred seventy-six clock hours of specific training that may be a part of the degree program and that includes at least ninety hours in each of the fields of alcohol, drug and counseling and six hours of training in professional ethics and three years of experience in the practice of alcohol and drug abuse counseling under appropriate supervision; or

(c) a master's degree in a counseling-related field, as defined by rule, from a regionally accredited institution, two hundred seventy-six clock hours of specific training that may be part of the degree program and that includes at least ninety hours in each of the fields of alcohol, drug and counseling and six hours of

training in professional ethics and two years of experience in the practice of alcohol and drug abuse counseling under appropriate supervision.

B. Effective July 1, 2005, the board shall license as an alcohol and drug abuse counselor a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is of good moral character with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) demonstrates professional competency by passing the required examinations prescribed by the board;

(4) provides three letters of recommendation: one letter from a current supervisor, one letter from a current employer and one letter from a professional substance abuse colleague; and

(5) has one of the following combinations of education and experience:

(a) a baccalaureate degree in a counseling-related field, as defined by rule, from a regionally accredited institution and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol, drug and counseling and six hours of professional ethics, two years and two thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and one hundred hours of face-to-face supervision; or

(b) a master's degree in counseling or a counseling-related field, as defined by rule, from a regionally accredited institution, and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol, drug and counseling and six hours of professional ethics, one year and one thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and fifty hours of face-to-face supervision hours."

Section 17. Section 61-9A-15 NMSA 1978 (being Laws 1993, Chapter 49, Section 15, as amended) is amended to read:

"61-9A-15. EXAMINATIONS.--

A. Applicants who have met the requirements for licensure shall be scheduled for the next appropriate examinations following the approval of the application. The board shall establish the board-approved examinations application

deadline and the requirements for reexamination if the applicant has failed the examinations.

B. The examinations shall cover subjects appropriate to the scope of practice as a licensed mental health counselor, a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist, a professional art therapist or a substance abuse counselor."

Section 18. Section 61-9A-16 NMSA 1978 (being Laws 1993, Chapter 49, Section 16) is amended to read:

"61-9A-16. TEMPORARY LICENSURE.--Prior to examination, an applicant for licensure may obtain a temporary license to engage in any counselor and therapist practice if the person meets all of the requirements, except examination, provided for in Section 61-9A-10, 61-9A-11, 61-9A-12, 61-9A-13 or

61-9A-14 NMSA 1978. The temporary license shall be valid no more than sixty days after the results of the next examination become available. If the individual should fail to take or pass those examinations, the temporary license shall automatically expire and the applicant will not be reissued a temporary license."

Section 19. Section 61-9A-22 NMSA 1978 (being Laws 1993, Chapter 49, Section 22, as amended) is amended to read:

"61-9A-22. LICENSURE BY CREDENTIALS.--The board may issue a license to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant holds a current license issued by the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation and is:

A. a national certified counselor as determined by the national board of certified counselors; or

B. a certified clinical mental health counselor as determined by the national board of certified counselors; or

C. a clinical member of the American association for marriage and family therapy; or

D. a registered art therapist, board certified (ATR-BC) by the art therapy credential board; or

E. an alcohol and drug abuse counselor and has taken and passed the required examination prescribed by the board.

Applicants who do not meet the licensure by credential must meet the current licensure requirements."

Section 20. Section 61-9A-23 NMSA 1978 (being Laws 1993, Chapter 49, Section 23, as amended) is amended to read:

"61-9A-23. LICENSE AND REGISTRATION RENEWAL.--

A. Each licensee or registrant shall renew his license or registration biennially by submitting a renewal application on a form provided by the board and complying with all renewal requirements. The board may establish a method to provide for staggered biennial terms. The board may authorize license renewal for one year to establish this renewal cycle and charge the proportionate license fee for that period.

B. If a license is not renewed by the expiration date, the licensee or registrant will be considered expired and will refrain from practicing. The licensee or registrant may renew within a ninety-day grace period by submitting payment of the renewal fee, late fee and compliance with all renewal requirements. Upon receipt of payment and ceu requirements, the licensee and registrant may resume practice. Failure to receive renewal notice and application for renewal of license from the board does not excuse a licensed professional counselor from the requirements for renewal.

C. If continuing education units requirements are not completed within the licensing period and by the expiration date, the license or registrant will be considered expired and will refrain from practicing.

D. A license or registration granted by the board shall be automatically suspended if the holder fails to apply for the renewal license or registration provided for in this section within a period of ninety days after the renewal deadline; provided that any license or registration so suspended may be restored by the board upon payment of a reinstatement fee not to exceed one hundred dollars (\$100) in addition to unpaid renewal or late fees. Failure to renew a license or registration within ninety days from the date of suspension as provided in this section shall cause the license or registration to automatically expire. Reinstatement of an expired license or registration will require the licensee to reapply and meet all current standards for licensure or registration.

E. A person licensed or registered under the Counseling and Therapy Practice Act who wishes to retire from practice shall notify the board in writing before the expiration of his current license or registration. If, within a period of five years from the year of retirement, the licensee or registrant wishes to resume practice, he shall so notify the board in writing, and upon giving proof of completing such continuing education as prescribed by rule of the board and the payment of a renewal license fee and reinstatement fee, his license or registration shall be restored to him in full effect."

Section 21. Section 61-9A-24 NMSA 1978 (being Laws 1993, Chapter 49, Section 24, as amended) is amended to read:

"61-9A-24. LICENSE AND REGISTRATION FEES.--Applicants for licensure or registration shall pay biennial fees set by the board in an amount not to exceed:

A. for application for initial licensure or registration, seventy-five dollars (\$75.00), which is not refundable;

B. for licensure or renewal as a professional mental health counselor or registered independent mental health counselor, three hundred dollars (\$300);

C. for licensure or renewal as a clinical professional mental health counselor, marriage and family therapist or professional art therapist, four hundred twenty dollars (\$420);

D. for registration or renewal as a registered mental health counselor, licensed mental health counselor or registered independent mental health counselor, two hundred forty dollars (\$240);

E. for all examinations, seventy-five dollars (\$75.00) or, if a national examination is used, an amount that shall not exceed the national examination costs by more than twenty-five percent;

F. for a duplicate or replacement license or registration, twenty-five dollars (\$25.00);

G. for failure to renew a license or registration within the allotted grace period, a late penalty fee not to exceed one hundred dollars (\$100);

H. reasonable administrative fees; and

I. for licensure, registration or renewal as an alcohol and drug abuse counselor, an alcohol abuse counselor, a drug abuse counselor or a substance abuse intern, two hundred dollars (\$200)."

HOUSE BUSINESS AND INDUSTRY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 714, AS AMENDED

CHAPTER 423

CHAPTER 423, LAWS 2003

AN ACT

RELATING TO LICENSING; PROVIDING AN EXEMPTION FROM THE COUNSELING AND THERAPY PRACTICE ACT FOR PEER COUNSELORS IN CERTAIN CHEMICAL DEPENDENCY RECOVERY PROGRAMS.

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

Section 1. Section 61-9A-6 NMSA 1978 (being Laws 1993, Chapter 49, Section 6, as amended) is amended to read:

"61-9A-6. EXEMPTIONS.--

A. Nothing in the Counseling and Therapy Practice Act shall be construed to prevent:

(1) a person who is licensed, certified or regulated under the laws of this state from engaging in activities consistent with the standards and ethics of his profession or practice; or

(2) an alternative, metaphysical or holistic practitioner from engaging in nonclinical activities consistent with the standards and codes of ethics of that practice.

B. Specifically exempted from the Counseling and Therapy Practice Act are:

(1) elementary and secondary school counselors acting on behalf of their employer who are otherwise regulated;

(2) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;

(3) duly ordained, commissioned or licensed ministers of a church or lay pastoral-care assistants providing pastoral services on behalf of a church;

(4) a person who is enrolled in an internship or practicum under appropriate supervision and is in the internship or practicum for the sole purpose of acquiring an advanced degree in mental health counseling, marriage and family therapy or art therapy or a degree in substance abuse counseling;

(5) practitioners of Native American healing arts; and

(6) individuals who serve as peer counselors for a twelve-step recovery program or a similar self-help chemical dependency recovery program that:

(a) does not offer chemical dependency treatment;

(b) does not charge program participants a fee; and

(c) allows program participants to maintain anonymity.

C. Nothing in this section shall be construed to allow an individual who has lost his/her license or has had his/her license suspended from the New Mexico counseling and therapy practice board or the New Mexico board of psychology examiners to avoid such loss or suspension by utilizing this exemption."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 395, AS AMENDED

CHAPTER 424

CHAPTER 424, LAWS 2003

AN ACT

RELATING TO COURT-LEVIED FEES; INCREASING THE AMOUNT OF JUDICIAL EDUCATION, MUNICIPAL CORRECTIONS AND LOCAL GOVERNMENT CORRECTIONS FEES; EXPANDING THE USE OF CERTAIN FEES; MAKING AN APPROPRIATION.

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

Section 1. Section 33-3-25 NMSA 1978 (being Laws 1983, Chapter 134, Section 1, as amended) is amended to read:

"33-3-25. LOCAL GOVERNMENT CORRECTIONS FUND CREATED--
ADMINISTRATION--DISTRIBUTION.--

A. There is created in the state treasury a "local government corrections fund" to be administered by the administrative office of the courts.

B. All balances in the local government corrections fund are appropriated to the administrative office of the courts for payment to counties and municipalities in counties with a metropolitan court for use by counties and those municipalities for county or municipal jailer or juvenile detention officer training; for the construction planning, construction, maintenance and operation of the county detention facility, municipal jail or juvenile detention facility; for paying the cost of housing county or municipal prisoners or juveniles in any detention facility in the state; for alternatives to

incarceration; or for complying with match or contribution requirements for the receipt of federal funds relating to detention facilities, jails or juvenile detention facilities. Payments shall be made quarterly upon certification by the magistrate court or metropolitan court and the motor vehicle division of the taxation and revenue department of eligible amounts as provided in Subsection C of this section.

C. Each county shall be eligible for a payment in an amount equal to the costs and fees collected by a magistrate court or a metropolitan court and the motor vehicle division pursuant to offenses committed within the county and deposited in the local government corrections fund; provided, in a county with a metropolitan court, the county shall be eligible for a payment in an amount equal to costs and fees collected pursuant to offenses committed within the boundaries of the unincorporated areas of the county, and a municipality in that county shall be eligible for a payment in an amount equal to the costs collected pursuant to offenses committed within the boundaries of the municipality.

D. Payments from the local government corrections fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the secretary of finance and administration.

E. All money received by a county or a municipality pursuant to this section shall be deposited in a special fund in the county or municipal treasury and shall be used solely for:

- (1) county or municipal jailer or juvenile detention officer training;
- (2) the construction planning, construction, maintenance and operation of the county detention facility, municipal jail or juvenile detention facility;
- (3) paying the cost of housing county or municipal prisoners or juveniles in any detention facility in the state;
- (4) alternatives to incarceration; or
- (5) complying with match or contribution requirements for the receipt of federal funds relating to detention facilities, jails or juvenile detention facilities."

Section 2. Section 35-6-1 NMSA 1978 (being Laws 1968, Chapter 62, Section 92, as amended by Laws 2001, Chapter 277, Section 2 and also by Laws 2001, Chapter 279, Section 2) is amended to read:

"35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF
"CONVICTED".--

A. Magistrate judges, including metropolitan court judges, shall assess and collect and shall not waive, defer or suspend 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.

Proceeds from this docket fee shall be

transferred to the administrative office

of the courts for deposit in the court

facilities fund;

docket fee, ten dollars (\$10.00) of which shall be deposited in the court automation fund and fifteen dollars (\$15.00) of which shall be deposited in the civil legal services fund, to be collected prior to docketing any civil action, except as provided in Subsection A of Section 35-6-3 NMSA 1978 62.00;

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.

Proceeds from this copying fee shall be

transferred to the administrative office of

the courts for deposit in the court facilities fund; and

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 court facilities 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 assess and collect and shall not waive, defer or suspend 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 as follows:

in a county with a metropolitan court . . . \$10.00;

in a county without a metropolitan court . . . 20.00;

(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
2.00;

(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;

and

(6) court facilities 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 as follows:

in a county with a metropolitan court 24.00;

in any other county 10.00.

E. Metropolitan court judges shall assess and collect and shall not waive, defer or suspend 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 3. Section 35-14-11 NMSA 1978 (being Laws 1983, Chapter 134, Section 6, as amended) is amended to read:

"35-14-11. MUNICIPAL ORDINANCE--COURT COSTS--

COLLECTION--PURPOSE.--

A. Every municipality shall enact an ordinance requiring assessment of corrections fees, judicial education fees and court automation fees to be collected as court costs and used as provided in this section.

B. A municipal judge shall collect the following costs:

- (1) a corrections fee of twenty dollars (\$20.00);
- (2) a judicial education fee of two dollars (\$2.00); and
- (3) a court automation fee of six dollars (\$6.00).

C. The fees are to be collected upon conviction from persons convicted of violating any ordinance relating to the operation of a motor vehicle or any ordinance that may be enforced by the imposition of a term of imprisonment.

D. All money collected pursuant to Paragraph (1) of Subsection B of this section shall be deposited in a special fund in the municipal treasury and shall be used for:

- (1) municipal jailer or juvenile detention officer training;
- (2) the construction planning, construction, operation and maintenance of a municipal jail or juvenile detention facility;
- (3) paying the cost of housing municipal prisoners in a county jail or detention facility or housing juveniles in a detention facility;
- (4) complying with match or contribution requirements for the receipt of federal funds relating to jails or juvenile detention facilities;
- (5) providing inpatient treatment or other substance abuse programs in conjunction with or as an alternative to jail sentencing;
- (6) defraying the cost of transporting prisoners to jails or juveniles to juvenile detention facilities; or
- (7) providing electronic monitoring systems.

E. A municipality may credit the interest collected from fees deposited in the special fund pursuant to Subsection D of this section to the municipality's general fund.

F. All money collected pursuant to Paragraph (2) of Subsection B of this section shall be remitted monthly to the state treasurer for credit to the judicial education fund and shall be used for the education and training, including production of bench books and other written materials, of municipal judges and other municipal court employees.

G. All money collected pursuant to Paragraph (3) of Subsection B of this section shall be remitted monthly to the state treasurer for credit to the municipal court automation fund and shall be used for the purchase and maintenance of court automation systems in the municipal courts. The court automation systems shall have the capability of providing, on a timely basis, electronic records in a format specified by the judicial information systems council.

H. As used in this section, "convicted" means the defendant has been found guilty of a criminal charge by a municipal judge, either after trial, a plea of guilty or a plea of nolo contendere."

Section 4. 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. in a county without a metropolitan court, twenty dollars (\$20.00) 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 two dollars (\$2.00), which shall be credited to the judicial education fund;

E. a brain injury services fee of five dollars (\$5.00), which shall be credited to the brain injury services fund; and

F. a court facilities fee as follows:

in a county with a metropolitan court	\$24.00;
in any other count	10.00

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE APPROPRIATIONS AND FINANCE

COMMITTEE SUBSTITUTE FOR HOUSE

BILLS 258, 228 AND 334, AS AMENDED

CHAPTER 425

CHAPTER 425, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; AUTHORIZING THAT PERSONAL INFORMATION PROVIDED FOR AN INITIAL APPLICATION OR RENEWAL OF A DRIVER'S LICENSE OR IDENTIFICATION CARD MAY BE FORWARDED TO THE SELECTIVE SERVICE SYSTEM; ENACTING A SECTION OF THE MOTOR VEHICLE CODE.

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

Section 1. A new section of the Motor Vehicle Code is enacted to read:

"CONSENT TO REGISTRATION WITH THE SELECTIVE SERVICE SYSTEM--
APPLICABILITY.--

A. Every male citizen of the state of New Mexico and every other male person residing in the state of New Mexico who, on the day or days fixed for the first or any subsequent Selective Service Act registration, is between the ages of eighteen and twenty-six shall consent to his registration in compliance with the requirements of the federal Military Selective Service Act, 50 U.S.C. App. 453 et seq., when applying to receive or renew a driver's license or identification card.

B. The division shall forward in an electronic format the necessary personal information required for registration of the applicants identified in Subsection A of this section to the selective service system. The applicant's submission of the application shall serve as an indication that the applicant has already registered with the selective service or that he is authorizing the division to forward to the selective service the necessary information for registration. The division shall notify the applicant on the application that his submission of the application will serve as his consent to be registered with the selective service system if he is required to do so by federal law.

C. The provisions of this section shall apply to every male citizen of the state of New Mexico and every other male person residing in the state of New Mexico who, on the day or days fixed for the first or any subsequent Selective Service Act registration, is between the ages of eighteen and twenty-six who are applying for issuance, renewal or duplication of an instruction permit, a driver's license, a provisional driver's license, a commercial driver's license or an identification card on or after the effective date of this act.

D. The provisions of this section shall not be applicable to any alien lawfully admitted to the United States as a nonimmigrant under Section 101(a)(15) of the Immigration and Nationality Act, as amended (66 Stat. 163; 8 U.S.C. 1101), for so long as he continues to maintain a lawful nonimmigrant status in the United States."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 89, AS AMENDED

CHAPTER 426

CHAPTER 426, LAWS 2003

AN ACT

RELATING TO HEALTH CARE; PROVIDING ADDITIONAL LICENSING REQUIREMENTS FOR CERTAIN HOSPITALS; DECLARING AN EMERGENCY.

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

Section 1. LEGISLATIVE FINDINGS--LICENSING REQUIREMENTS FOR CERTAIN HOSPITALS.--

A. The legislature finds that:

(1) acute care general hospitals throughout New Mexico operate emergency departments and provide vital emergency medical services to patients requiring immediate medical care; and

(2) federal and state laws require hospitals that operate an emergency department to provide certain emergency services and care to any person, regardless of that person's ability to pay. Accordingly, these hospitals encounter significant financial losses when treating uninsured or underinsured patients.

B. As used in this section:

(1) "limited service hospital" means a hospital that limits admissions according to medical or surgical specialty, type of disease or medical condition, or a hospital that limits its inpatient hospital services to surgical services or invasive diagnostic and treatment procedures; provided, however, that a "limited service hospital" does not include:

(a) a hospital licensed by the department as a special hospital;

(b) an eleemosynary hospital that does not bill patients for services provided; or

(c) a hospital that has been granted a license prior to January 1, 2003;

(2) "department" means the department of health; and

(3) "low-income patient" means a patient whose family or household income does not exceed two hundred percent of the federal poverty level.

C. The department shall issue a license to an acute-care or general hospital or a limited services hospital that agrees to:

(1) continuously maintain and operate an emergency department that provides emergency medical services as determined by the department;

(2) participate in the medicaid, medicare and county indigent care programs;

(3) require a physician owner to disclose a financial interest in the hospital before referring a patient to the hospital;

(4) comply with the same quality standards applied to other hospitals;

(5) provide emergency services and general health care to nonpaying patients and low-income reimbursed patients in the same proportion as the patients are treated in acute-care general hospitals in the local community, as determined by the department in consultation with a statewide hospital organization, the government of the county in which the facilities are located and the affected hospitals; provided that:

(a) a hospital may appeal the determination of the department pursuant to Section 39-3-1.1 NMSA 1978; and

(b) the annual cost of the care required to be provided pursuant to this paragraph shall not exceed an amount equal to five percent of the hospital's annual revenue; and

(6) require a health care provider to disclose a financial interest before referring a patient to the hospital.

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

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 2003

CHAPTER 427

CHAPTER 427, LAWS 2003

AN ACT

RELATING TO MOTOR VEHICLES; REPEALING AND ENACTING A SECTION OF THE MOTOR VEHICLE CODE CONCERNING JUDICIAL REVIEW OF AN ARBITRATION AWARD.

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

Section 1. Section 66-5-303 NMSA 1978 (being Laws 1969, Chapter 18, Section 4) is repealed and a new Section 66-5-303 NMSA 1978 is enacted to read:

"66-5-303. UNINSURED MOTORIST--JUDICIAL REVIEW ARBITRATION AWARD.--After a party to an arbitration proceeding involving an uninsured motorist receives notice of an award, the party may make a motion to the district court for an order confirming the award, at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to Section 44-7A-21 or 44-7A-25 NMSA 1978 or is vacated pursuant to Section 44-7A-24 NMSA 1978."

HOUSE JUDICIARY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 867

CHAPTER 428

CHAPTER 428, LAWS 2003

AN ACT

RELATING TO BOARDS; EXTENDING THE SUNSET DATES FOR CERTAIN BOARDS; AMENDING THE PROFESSIONAL PSYCHOLOGIST ACT TO ELIMINATE CERTAIN EXPERIENCE REQUIREMENTS; SPECIFYING THE CORRECT NAME OF THE INSPECTION OF PUBLIC RECORDS ACT.

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

Section 1. 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, 2009 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Optometry Act until July 1, 2010. Effective July 1, 2010, the Optometry Act is repealed."

Section 2. Section 61-3-31 NMSA 1978 (being Laws 1979, Chapter 379, Section 11, as amended) is amended to read:

"61-3-31. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of nursing is terminated on July 1, 2009 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Nursing Practice Act until July 1, 2010. Effective July 1, 2010, the Nursing Practice Act is repealed."

Section 3. 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, 2009 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Chiropractic Physician Practice Act until July 1, 2010. Effective July 1, 2010, the Chiropractic Physician Practice Act is repealed."

Section 4. Section 61-5A-30 NMSA 1978 (being Laws 1994, Chapter 55, Section 42, as amended) is amended to read:

"61-5A-30. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico board of dental health care is terminated on July 1, 2009 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, 2010. Effective July 1, 2010, the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act are repealed."

Section 5. 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, 2009 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Medical Practice Act until July 1, 2010. Effective July 1, 2010, the Medical Practice Act is repealed."

Section 6. 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, 2009 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Podiatry Act until July 1, 2010. Effective July 1, 2010, the Podiatry Act is repealed."

Section 7. Section 61-9-5.1 NMSA 1978 (being Laws 1996, Chapter 54, Section 12) is amended to read:

"61-9-5.1. ACTIONS OF BOARD--IMMUNITY--CERTAIN RECORDS NOT PUBLIC RECORDS.--

A. A member of the board or person working on behalf of the board shall not be civilly liable or subject to civil damages for any good faith action undertaken or performed within the proper functions of the board.

B. All written and oral communications made by a person to the board relating to actual or potential disciplinary action shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act. All data, communications and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except:

(1) to the extent necessary to carry out the board's functions;

(2) as needed for judicial review of the board's actions; or

(3) pursuant to a court order issued by a court of competent jurisdiction.

C. Notwithstanding the provisions of Subsection B of this section, at the conclusion of an actual disciplinary action by the board, all data, communications and information acquired by the board relating to an actual disciplinary action taken against a person subject to the provisions of the Professional Psychologist Act shall be public records pursuant to the provisions of the Inspection of Public Records Act."

Section 8. Section 61-9-11.1 NMSA 1978 (being Laws 1983, Chapter 334, Section 4, as amended) is amended to read:

"61-9-11.1. PSYCHOLOGIST ASSOCIATES--LICENSURE-EXAMINATION.--

A. The board shall issue a license as a psychologist associate to each applicant who files an application upon a form and in such manner as the board prescribes,

accompanied by the fee required by the Professional Psychologist Act, and who furnishes evidence satisfactory to the board that he:

(1) has reached the age of majority, is of good moral character and is not in violation of any of the provisions of the Professional Psychologist Act and the rules and regulations adopted pursuant to that act;

(2) holds a master's degree in psychology from a department of psychology of a school or college; and

(3) demonstrates professional competence by passing:

(a) the examination for professional practice in psychology promulgated by the association of state and provincial psychology boards with a score equivalent to or greater than the statistical mean as reported by the association of state and provincial psychology boards for all master's-level candidates taking the examination on that occasion; and

(b) an oral examination administered and graded by the board, investigating the applicant's training, experience and knowledge of his area of practice. The oral examination shall be evaluated on a pass-fail basis.

B. Upon investigation of the application and other evidence submitted, the board shall, not less than thirty days prior to the examination, notify each applicant that the application and evidence submitted for licensure is satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for rejection.

C. The place of examination shall be designated in advance by the board, and examinations shall be given at such time and place and under such supervision as the board may determine.

D. In the event an applicant fails to receive a passing grade, he may apply for reexamination and shall be allowed to take a subsequent examination upon payment of the fee required by the Professional Psychologist Act.

E. The board shall keep a record of all examinations, and the grade assigned to each, as part of its records for at least two years subsequent to the date of examination.

F. The board may adopt reasonable rules and regulations classifying areas and conditions of practice permissible for psychologist associates."

Section 9. Section 61-9-19 NMSA 1978 (being Laws 1978, Chapter 188, Section 2, as amended) 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, 2009 pursuant to

the Sunset Act. The board shall continue to operate according to the provisions of the Professional Psychologist Act until July 1, 2010. Effective July 1, 2010, the Professional Psychologist Act is repealed."

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, 2009 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, 2010. Effective July 1, 2010, Chapter 61, Article 10 NMSA 1978 is repealed."

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, 2009 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Pharmacy Act until July 1, 2010. Effective July 1, 2010, the Pharmacy Act is repealed."

Section 12. 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 advisory board of respiratory care practitioners is terminated on July 1, 2009 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Respiratory Care Act until July 1, 2010. Effective July 1, 2010, the Respiratory Care Act is repealed."

Section 13. Section 61-12D-17 NMSA 1978 (being Laws 1997, Chapter 89, Section 17) is amended to read:

"61-12D-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The physical therapy board is terminated on July 1, 2009 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Physical Therapy Act until July 1, 2010. Effective July 1, 2010, the Physical Therapy Act is repealed."

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

CHAPTER 429

CHAPTER 429, LAWS 2003

WITH LINE-ITEM VETOES

AN ACT

RELATING TO CAPITAL EXPENDITURES; AUTHORIZING THE ISSUANCE OF SEVERANCE TAX BONDS; REAUTHORIZING BALANCES; CHANGING THE PURPOSE OF SEVERANCE TAX BOND APPROPRIATIONS; CLARIFYING CONDITIONS FOR THE ISSUANCE OF BONDS; CLARIFYING CONDITIONS FOR THE EXPENDITURE OF SEVERANCE TAX BOND PROCEEDS; CLARIFYING CONDITIONS FOR THE REVERSION OF UNEXPENDED BALANCES; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1. SEVERANCE TAX BONDS--AUTHORIZATIONS-- APPROPRIATION OF PROCEEDS.--

A. The state board of finance may issue and sell severance tax bonds in compliance with the Severance Tax Bonding Act in an amount not to exceed the total of the amounts authorized for purposes specified in this act. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that the project has been developed sufficiently to justify the issuance and that the project can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated for the purposes specified in this act.

B. The agencies named in this act shall certify to the state board of finance when the money from the proceeds of the severance tax bonds authorized in this section is needed for the purposes specified in the applicable section of this act. If an agency has not certified the need for the issuance of the bonds for a particular project, including projects that have been reauthorized, by the end of fiscal year 2005, the authorization for that project is void.

C. Before an agency may certify for the issuance of severance tax bonds, the project must be developed sufficiently so that the agency reasonably expects to:

(1) incur within six months after the applicable bonds have been issued a substantial binding obligation to a third party to expend at least five percent of the bond proceeds for the project; and

(2) spend at least eighty-five percent of the bond proceeds within three years after the applicable bonds have been issued.

D. Except as otherwise provided in this section or another section of this act, the unexpended balance from the proceeds of severance tax bonds issued for a project, including projects that have been reauthorized, shall revert to the severance tax bonding fund as follows:

(1) for projects for which severance tax bonds were issued to match federal grants, six months after completion of the project;

(2) for projects for which severance tax bonds were issued to purchase vehicles, heavy equipment, educational technology or other equipment or furniture that is not related to a more inclusive construction or renovation project, at the end of the fiscal year following the fiscal year in which the severance tax bonds were issued for the purchase;

(3) for projects for which severance tax bonds were issued to purchase emergency vehicles or other vehicles that require special equipment, at the end of the fiscal year two years following the fiscal year in which the severance tax bonds were issued for the purchase; and

(4) for all other projects for which severance tax bonds were issued, within six months of completion of the project, but no later than the end of fiscal year 2008.

E. Except for appropriations to the capital program fund, money from severance tax bond proceeds provided pursuant to this act shall not be used to pay indirect project costs.

F. For the purpose of this section, "unexpended balance" means the remainder of an appropriation after reserving for unpaid costs and expenses covered by binding written obligations to third parties.

Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--LIMITATIONS--REVERSIONS.--

A. The general fund appropriations in this act are from fiscal year 2003 and may be expended through fiscal year 2008 except as otherwise provided in this section.

B. Unless otherwise provided, the unexpended balance of an appropriation made in this act from the general fund or other state fund, including changes to prior appropriations, shall revert to the originating fund as follows:

(1) for projects for which appropriations were made to match federal grants, six months after completion of the project;

(2) for projects for which appropriations were made to purchase vehicles, heavy equipment, educational technology or equipment or furniture that is not related to a more inclusive construction or renovation project, at the end of the fiscal year following the fiscal year in which the appropriation was made for the purchase;

(3) for projects for which appropriations were made to purchase emergency vehicles or other vehicles that require special equipment, at the end of the fiscal year two years following the fiscal year in which the severance tax bonds were issued for the purchase; and

(4) for all other projects for which appropriations were made, within six months of completion of the project, but no later than the end of fiscal year 2008.

C. Except for appropriations to the capital program fund, money from appropriations made in this act shall not be used to pay indirect project costs.

D. For the purpose of this section, "unexpended balance" means the remainder of an appropriation after reserving for unpaid costs and expenses covered by binding written obligations to third parties.

Section 3. AFRICAN-AMERICAN AFFAIRS PROJECT--OFFICE ON AFRICAN-AMERICAN AFFAIRS--SEVERANCE TAX BONDS.--

Pursuant to the provisions of Section 1 of this act, upon certification by the office on African-American affairs that the need exists for the issuance of the bonds, twenty-five thousand dollars (\$25,000) is appropriated to the office on African-American affairs for the purchase of artifacts, exhibits and art of the African-American culture and heritage for the office on African-American affairs in Santa Fe county.

Section 4. AGING PROJECTS--STATE AGENCY ON AGING--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1

of this act, upon certification by the state agency on aging that the need exists for the issuance of the bonds, the following amounts are appropriated to the state agency on aging for the following purposes:

1. five thousand dollars (\$5,000) to purchase office equipment for the Corrales senior center in Bernalillo and Sandoval counties;

2. twenty-five thousand dollars (\$25,000) to renovate the parking lot and make landscaping improvements at Bear Canyon senior center in Albuquerque in Bernalillo county;

3. twenty-two thousand dollars (\$22,000) to purchase furniture, a sound system, computers and other equipment at the Los Volcanes senior center in Albuquerque in Bernalillo county;

4. one thousand three hundred dollars (\$1,300) to purchase or construct a storage shed for the Isleta elderly center at the Pueblo of Isleta in Bernalillo county;

5. five thousand four hundred dollars (\$5,400) to purchase meals equipment and appliances for senior centers in Bernalillo county;

6. three thousand three hundred seventy dollars (\$3,370) to make improvements to the Isleta elderly center at the Pueblo of Isleta in Bernalillo county;

7. thirty thousand dollars (\$30,000) to purchase equipment to improve Bear Canyon senior center in Albuquerque in Bernalillo county;

8. seventy-five thousand dollars (\$75,000) to renovate the restrooms at the Palo Duro senior center in Albuquerque in Bernalillo county;

9. one hundred thousand dollars (\$100,000) to purchase and install windows and carpet for the Palo Duro senior center in Albuquerque in Bernalillo county;

10. one hundred twenty-five thousand dollars (\$125,000) to repave the parking lot for the Palo Duro senior center in Albuquerque in Bernalillo county;

11. six thousand dollars (\$6,000) to purchase and install cooling systems for senior centers in Catron county;

12. twelve thousand nine hundred dollars (\$12,900) to purchase meals equipment and appliances for senior centers in Catron county;

13. ten thousand dollars (\$10,000) to plan, design and construct a senior building in Grants in Cibola county;

14. ten thousand dollars (\$10,000) to plan, design and construct a senior building in Grants in Cibola county;

15. thirty thousand dollars (\$30,000) to plan, design and construct a facility to serve the fitness needs of seniors at the Pueblo of Acoma in Cibola county;

16. five thousand nine hundred ninety-eight dollars (\$5,998) to purchase meals equipment and appliances for the Pueblo of Acoma senior center in Cibola county;

17. fourteen thousand four hundred five dollars (\$14,405) to purchase meals equipment and appliances for the Grants senior center in Cibola county;

18. fourteen thousand four hundred sixty-four dollars (\$14,464) to purchase meals equipment and appliances for senior centers in Colfax county;

19. twenty-one thousand dollars (\$21,000) for furniture and equipment for La Casa de Buena Salud senior center in Clovis in Curry county;

20. twenty-five thousand two hundred fifty-eight dollars (\$25,258) to make improvements to the Curry resident senior meals association senior center in Curry county;

21. twenty-four thousand dollars (\$24,000) to purchase a vehicle for the eastern New Mexico area agency on aging in Curry county;

22. fifteen thousand dollars (\$15,000) to purchase vehicle handicap modifications for the Fort Sumner senior program in De Baca county;

23. twenty-five thousand dollars (\$25,000) to make improvements to the Mesilla Park senior center in Dona Ana county;

24. twenty thousand dollars (\$20,000) to construct phase 2 of the senior center in Artesia in Eddy county;

25. thirty thousand dollars (\$30,000) to construct and equip an addition to the kitchen at the Santa Clara senior center in Grant county;

26. twenty-five thousand six hundred sixty-three dollars (\$25,663) to purchase meals equipment and appliances for senior centers in Grant county;

27. forty-six thousand dollars (\$46,000) to purchase a vehicle for the Puerto de Luna senior center in Guadalupe county;

28. sixty thousand dollars (\$60,000) to make improvements to the Puerto de Luna senior center in Guadalupe county;

29. forty-six thousand dollars (\$46,000) to purchase a vehicle equipped for disabled persons for the La Loma senior center in Guadalupe county;

30. twenty-five thousand dollars (\$25,000) to purchase a vehicle for the Lordsburg senior center in Hidalgo county;

31. sixty thousand dollars (\$60,000) to make improvements to the Hobbs senior meals site in Lea county;

32. nine thousand dollars (\$9,000) to purchase meals equipment and appliances for the Woolworth senior center in Jal in Lea county;

33. sixteen thousand nine hundred twenty-five dollars (\$16,925) to purchase meals equipment and appliances for the Deming and Luna senior center in Luna county;

34. twenty-five thousand dollars (\$25,000) for renovation of the senior center for the Crownpoint chapter of the Navajo Nation in McKinley county;

35. twenty-five thousand dollars (\$25,000) to purchase a vehicle for the Rehoboth McKinley Christian health care services program in McKinley county;

36. sixteen thousand six hundred sixty-four dollars (\$16,664) to purchase meals equipment and appliances for the Thoreau senior center in McKinley county;

37. forty-six thousand dollars (\$46,000) to purchase a vehicle equipped for disabled persons for the Thoreau senior center in McKinley county;

38. forty-six thousand dollars (\$46,000) to purchase a vehicle equipped for disabled persons for the Ramah senior center in McKinley county;

39. fourteen thousand two hundred sixty-nine dollars (\$14,269) to purchase meals equipment and appliances for the Ramah senior center in McKinley county;

40. one hundred sixty thousand four hundred fifty-five dollars (\$160,455) to make improvements to the Zuni senior center at the Pueblo of Zuni in McKinley county;

41. one hundred fifty thousand dollars (\$150,000) to plan, design and construct a senior center at the Mariano Lake chapter of the Navajo Nation in McKinley county;

42. ten thousand dollars (\$10,000) to purchase meals equipment and appliances for the Pueblo of Sandia, the Pueblo of Santa Ana and the Pueblo of Zia in Sandoval county;

43. twelve thousand dollars (\$12,000) to purchase meals equipment and appliances for the Mora and San Miguel senior centers in Mora and San Miguel counties;

44. twenty-five thousand dollars (\$25,000) to make improvements to the Mora and San Miguel senior centers in Mora and San Miguel counties;

45. one thousand three hundred dollars (\$1,300) to purchase meals equipment and appliances for the Mescalero elderly center in Otero county;

46. seven thousand three hundred dollars (\$7,300) to purchase meals equipment and appliances for Cloudcroft Sacramento senior services in Otero county;

47. fifty thousand dollars (\$50,000) to plan, design, construct and equip a fitness room addition to the Alamogordo senior center in Otero county;

48. fifty thousand dollars (\$50,000) to construct a fitness room at the Alamogordo senior center in Alamogordo in Otero county;

49. fifteen thousand dollars (\$15,000) to purchase meals equipment for the eastern New Mexico agency on aging in Tukumcari in Quay county;

50. twenty-three thousand dollars (\$23,000) to make improvements to the senior center in Tukumcari in Quay county;

51. two thousand six hundred twenty-five dollars (\$2,625) to purchase equipment for senior centers in Rio Arriba county;

52. one thousand seven hundred dollars (\$1,700) to purchase meals equipment for the Pueblo of Santa Clara in Rio Arriba county;

53. forty-six thousand dollars (\$46,000) to purchase a vehicle equipped for disabled persons for Tierra Amarilla and Chama senior centers in Rio Arriba county;

54. twenty thousand dollars (\$20,000) to make improvements to the Santa Clara senior center at the Pueblo of Santa Clara in Rio Arriba county;

55. ten thousand dollars (\$10,000) for sidewalk, parking area, landscaping and general improvements for the eastern plains council of governments' assisted living apartment complex in Portales in Roosevelt county;

56. fifty thousand dollars (\$50,000) to make improvements to the Hogback senior center of the Navajo Nation in San Juan county;

57. seventy-five thousand dollars (\$75,000) to make improvements to the Gadii'ahi senior center of the Navajo Nation in San Juan county;

58. thirty-five thousand dollars (\$35,000) to make improvements to the Sanostee senior center of the Navajo Nation in San Juan county;

59. three thousand one hundred twenty-five dollars (\$3,125) to purchase meals equipment and appliances for the Bloomfield senior center in San Juan county;

60. one hundred seventy-six thousand dollars (\$176,000) to make improvements to the Las Vegas senior center in San Miguel county;

61. twenty-five thousand dollars (\$25,000) to improve and furnish senior centers in San Miguel and Mora counties;

62. fifty thousand dollars (\$50,000) to expand the elderly center to accommodate the increasing programs and activities of the seniors at the Pueblo of San Felipe in Sandoval county;

63. one hundred fifty thousand dollars (\$150,000) to replace the heating, ventilation and air conditioning system for the Meadowlark senior center in Rio Rancho in Sandoval county;

64. two hundred thousand dollars (\$200,000) for preparing the site for, planning, designing, constructing and equipping an elder care center in the Pueblo of San Ildefonso in Santa Fe county;

65. thirty-four thousand seven hundred thirty dollars (\$34,730) to purchase meals equipment for the Pacheco senior center in Santa Fe county;

66. eight thousand seven hundred fifty dollars (\$8,750) to purchase meals equipment and appliances for the San Ildefonso senior center in Santa Fe county;

67. fifty thousand dollars (\$50,000) to make improvements and purchase meals equipment and appliances for the senior centers in Santa Fe county;

68. one hundred thousand dollars (\$100,000) to make improvements to the Pueblo of Nambe senior center in Santa Fe county;

69. fifty thousand dollars (\$50,000) to construct a senior center on the south side of Santa Fe in Santa Fe county;

70. ten thousand dollars (\$10,000) to purchase vehicles for the division of senior services meals on wheels program in Santa Fe in Santa Fe county;

71. one hundred thousand dollars (\$100,000) to design, construct and equip a senior center in Magdalena in Socorro county;

72. thirteen thousand eight hundred eighty-two dollars (\$13,882) to purchase meals equipment and appliances for the senior program in Taos county;

73. eighteen thousand four hundred dollars (\$18,400) to purchase meals equipment and appliances for the Pueblo of Picuris senior center in Taos county;

74. forty-six thousand dollars (\$46,000) to purchase a vehicle for the Pueblo of Picuris senior center in Taos county;

75. forty thousand dollars (\$40,000) to make improvements to the Mountainair senior center in Torrance county;

76. ten thousand dollars (\$10,000) to purchase pool tables for the Belen senior center in Valencia county;

77. forty thousand dollars (\$40,000) to equip and improve Meadow Lake senior center in Valencia county;

78. seven thousand nine hundred thirty dollars (\$7,930) to make improvements to the Valencia county senior center in Valencia county;

79. thirty thousand dollars (\$30,000) to improve Bear Canyon senior center in Albuquerque in Bernalillo county;

80. thirty thousand dollars (\$30,000) to renovate the Palo Duro senior center in Albuquerque in Bernalillo county;

81. thirty-five thousand dollars (\$35,000) for the purchase of a vehicle for the Puerto de Luna senior center in Guadalupe county;

82. twenty-three thousand dollars (\$23,000) for a shed, furnishings and equipment for the senior center at the Pueblo of Nambe in Santa Fe county;

83. three thousand two hundred fifty dollars (\$3,250) to furnish the senior center at the Pueblo of San Ildefonso in Santa Fe county;

84. fifteen thousand dollars (\$15,000) to purchase furniture and equipment for the senior center in Mora in Mora county;

85. twenty-five thousand dollars (\$25,000) to construct a fitness room at the Alamogordo senior center in Alamogordo in Otero county;

86. forty-five thousand dollars (\$45,000) to replace the heating, ventilation and air conditioning system for the Meadowlark senior center in Rio Rancho in Sandoval county;

87. one thousand five hundred dollars (\$1,500) to purchase office equipment for the senior center in Corrales in Sandoval county;

88. twenty-five thousand dollars (\$25,000) to renovate the Munson senior center kitchen in Las Cruces in Dona Ana county;

89. fifty thousand dollars (\$50,000) to plan and design an adult daycare facility in the Pueblo of Zuni in McKinley county;

90. fifty thousand dollars (\$50,000) to design, plan and construct a senior center for the Iyanbito chapter of the Navajo Nation in McKinley county;

91. fifty thousand dollars (\$50,000) to construct, equip and furnish a senior center for the Church Rock chapter of the Navajo Nation in McKinley county;

92. fifteen thousand dollars (\$15,000) to purchase a vehicle for the retired and senior volunteer program in Gallup in McKinley county;

93. fifty thousand dollars (\$50,000) to construct a senior center on the south side of Santa Fe in Santa Fe county;

94. thirty thousand dollars (\$30,000) to purchase furniture, a sound system, computers, other equipment and a van at the Los Volcanes senior center in Albuquerque in Bernalillo county;

95. fifty thousand dollars (\$50,000) to renovate the Palo Duro senior center in Albuquerque in Bernalillo county;

96. fifteen thousand dollars (\$15,000) to renovate the senior center for the Crownpoint chapter of the Navajo Nation in McKinley county; and

97. fifty thousand dollars (\$50,000) to plan, design and construct a senior center for the Standing Rock chapter of the Navajo Nation in McKinley county.

Section 5. ARMORY PROJECTS--STATE ARMORY BOARD--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the state armory board that the need exists for the issuance of the bonds, the following amounts are appropriated to the state armory board for the following purposes:

1. two hundred fifty thousand dollars (\$250,000) to renovate and repair state armory facilities;

2. twenty thousand dollars (\$20,000) to improve the Belen national guard armory military vehicle parking area in Belen in Valencia county[; and]

~~[3. fifteen thousand dollars (\$15,000) to improve the military vehicle parking lot at the Belen national guard armory in Valencia county].~~

Section 6. BORDER PROJECTS--BORDER AUTHORITY--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the border authority that the need exists for the issuance of the bonds, the following amounts are appropriated to the border authority for the following purposes:

1. eighty thousand dollars (\$80,000) to construct and furnish a facility to house the border authority in Santa Teresa in Dona Ana county;
2. ten thousand dollars (\$10,000) to construct and furnish a facility to house the border authority in Santa Teresa in Dona Ana county;
3. ten thousand dollars (\$10,000) to construct and furnish a facility to house the border authority in Santa Teresa in Dona Ana county;
4. ten thousand dollars (\$10,000) to construct and furnish a facility to house the border authority in Santa Teresa in Dona Ana county;
5. seven thousand dollars (\$7,000) for a border authority facility in Santa Teresa in Dona Ana county;
6. five thousand dollars (\$5,000) to construct a new facility to house the border authority at the international port of entry in Dona Ana county;
7. ten thousand dollars (\$10,000) to construct and furnish a border authority facility in Santa Teresa in Dona Ana county;
8. seven thousand dollars (\$7,000) to construct and furnish a facility for the border authority in Santa Teresa in Dona Ana county; and
9. ten thousand dollars (\$10,000) to construct and furnish a facility for the border authority in Santa Teresa in Dona Ana county.

Section 7. COURT PROJECTS--THIRTEENTH JUDICIAL DISTRICT COURT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the thirteenth judicial district court that the need exists for the issuance of the bonds, the following amounts are appropriated to the thirteenth judicial district court for the following purposes:

1. eighteen thousand dollars (\$18,000) to purchase an automobile for the thirteenth judicial district court in Sandoval, Valencia and Cibola counties; and

2. twenty thousand dollars (\$20,000) for electronic, wiring, audio and visual, recording and telecommunications systems for the thirteenth judicial district court complex in Sandoval county.

Section 8. CUMBRES AND TOLTEC RAILROAD PROJECTS--CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the Cumbres and Toltec scenic railroad commission that the need exists for the issuance of the bonds, one hundred twenty thousand dollars (\$120,000) is appropriated to the Cumbres and Toltec scenic railroad commission for the federal match to rebuild three steam locomotives used by the Cumbres and Toltec scenic railroad commission in Rio Arriba county.

Section 9. CULTURAL AFFAIRS PROJECTS--OFFICE OF CULTURAL AFFAIRS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the office of cultural affairs that the need exists for the issuance of the bonds, the following amounts are appropriated to the office of cultural affairs for the following purposes:

1. thirty thousand dollars (\$30,000) to purchase art by Peter Hurd for the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county;

2. thirty-seven thousand dollars (\$37,000) to acquire a Peter Hurd mural sketch for the New Mexico farm and ranch heritage museum in Dona Ana county;

3. ten thousand dollars (\$10,000) to relocate a historic bridge and place it across an arroyo to give access to exhibits for the New Mexico farm and ranch heritage museum in Dona Ana county;

4. twenty-five thousand dollars (\$25,000) to purchase exhibits and make improvements at the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county;

5. fifty thousand dollars (\$50,000) to relocate the Hondo bridge at the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county;

6. eleven thousand dollars (\$11,000) to relocate a historic bridge and place it across an arroyo to give access to exhibits for the New Mexico farm and ranch heritage museum in Dona Ana county;

7. four thousand dollars (\$4,000) to acquire a Peter Hurd mural sketch for the New Mexico farm and ranch heritage museum in Dona Ana county;

8. fifty thousand dollars (\$50,000) for rehabilitating and stabilizing the Tunstall store museum at Lincoln state monument in Lincoln county;

9. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct the education building at the national Hispanic cultural center in Albuquerque in Bernalillo county;

10. twenty-five thousand dollars (\$25,000) for exhibits for the Camino Real international heritage and cultural center in Socorro county;

11. twenty-five thousand dollars (\$25,000) to relocate the Hondo bridge at the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county;

12. one hundred fifty thousand dollars (\$150,000) to plan, design and construct the education building at the national Hispanic cultural center in Albuquerque in Bernalillo county;

13. five thousand dollars (\$5,000) for the purchase of art for the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county;

14. fifty thousand dollars (\$50,000) for capital improvements for the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county;

15. forty thousand dollars (\$40,000) to purchase and install equipment at the national Hispanic cultural center in Albuquerque in Bernalillo county;

16. one hundred fifty thousand dollars (\$150,000) to plan, design and construct the education building at the national Hispanic cultural center in Albuquerque in Bernalillo county; and

17. one hundred fifty thousand dollars (\$150,000) to plan, design and construct the education building at the national Hispanic cultural center in Albuquerque in Bernalillo county.

Section 10. ECONOMIC DEVELOPMENT PROJECTS--ECONOMIC DEVELOPMENT DEPARTMENT--SEVERANCE TAX BONDS.-- Pursuant to the provisions of Section 1 of this act, upon certification by the economic development department that the

need exists for the issuance of the bonds, the following amounts are appropriated to the economic development department for the following purposes:

1. two hundred thousand dollars (\$200,000) for the downtown revitalization project to include planning, designing and constructing a new city hall in Las Vegas in San Miguel county; and

2. twenty-five thousand dollars (\$25,000) to conduct an asset building and asset incentives feasibility study statewide.

Section 11. MESILLA VALLEY BOSQUE PARK PROJECTS--STATE PARKS DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the state parks division of the energy, minerals and natural resources department that the need exists for the issuance of the bonds, the following amounts are appropriated to the state parks division of the energy, minerals and natural resources department for the following purposes:

1. twenty thousand dollars (\$20,000) to acquire land for, plan and construct the Mesilla Valley bosque park in Dona Ana county;

2. five thousand dollars (\$5,000) to acquire land for, plan and construct the Mesilla Valley bosque park in Dona Ana county;

3. twenty-five thousand dollars (\$25,000) for land acquisition, construction of access roads and walking paths and installation of signage at Mesilla Valley bosque park in Dona Ana county;

4. twenty-five thousand dollars (\$25,000) for land acquisition, construction of access roads and walking paths and installation of signage at Mesilla Valley bosque park in Dona Ana county; and

5. fifty thousand dollars (\$50,000) for land acquisition, construction of access roads and walking paths and installation of signage at Mesilla Valley bosque park in Dona Ana county.

Section 12. STATE ENGINEER PROJECTS--OFFICE OF THE STATE ENGINEER--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the office of the state engineer that the need exists for the issuance of the bonds, the

following amounts are appropriated to the office of the state engineer for the following purposes:

1. ten thousand five hundred dollars (\$10,500) for gates on the middle Rio Grande conservancy district ditch banks along the Arenal ditch between Gonzales road and Sunset Farms road, along the Beckham lateral between San Ygnacio road, Tapia road and Goff road, and along the Pajarito lateral between Foothill drive SW and Meadow lane SW in the south valley of Bernalillo county;
2. ten thousand dollars (\$10,000) for traffic barriers and gates for the middle Rio Grande conservancy district in house district 12 in Bernalillo county;
3. fifteen thousand dollars (\$15,000) to construct and install a well irrigation system for the Carlsbad cemetery in Eddy county;
4. twenty-five thousand dollars (\$25,000) for the drilling of wells and the construction of a pipeline for the Hope community ditch association in Eddy county;
5. fifty thousand dollars (\$50,000) to conduct a water survey of the east mountain area of Sandoval, Santa Fe and Bernalillo counties;
6. three million six hundred sixty thousand dollars (\$3,660,000) for projects on the Rio Grande to meet the requirements of the federal Endangered Species Act of 1973;
7. two hundred thousand dollars (\$200,000) to purchase equipment for water measurement investigation facilities statewide;
8. ten thousand dollars (\$10,000) to develop and implement a model water rights protection project for the Acequia de Alcalde in Rio Arriba county;
9. fifty thousand dollars (\$50,000) to dredge the reservoir in Bloomfield in San Juan county;
10. ten thousand dollars (\$10,000) for the Santa Fe watershed association to construct a storm management water system for the city of Santa Fe that releases water into the Santa Fe river to provide a minimum flow of three cubic feet per second at the Alameda bridge in Santa Fe in Santa Fe county;
11. fifty thousand dollars (\$50,000) for improvements to the pipeline, valves and water control structure for the acequia de La Cienega in Santa Fe county;
12. twenty-five thousand dollars (\$25,000) for information technology for the Arch Hurley conservancy district in Quay county;

13. two hundred fifty thousand dollars (\$250,000) for construction of raw water reservoir 3 in Aztec in San Juan county;

14. one hundred thousand dollars (\$100,000) for dredging of the Bloomfield reservoir in Bloomfield in San Juan county; and

15. one hundred thousand dollars (\$100,000) to purchase advanced equipment for the office of the state engineer, including prototype models to measure real-time flow of river water.

Section 13. INTERSTATE STREAM PROJECTS--INTERSTATE STREAM COMMISSION--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the interstate stream commission that the need exists for the issuance of the bonds, the following amounts are appropriated to the interstate stream commission for the following purposes:

1. ten thousand dollars (\$10,000) to repair, renovate and improve La Acequia de El Llano in Canjilon in Rio Arriba county;

2. twenty-five thousand dollars (\$25,000) for construction and repairs to the Espinoza ditch in Chimayo in Rio Arriba county;

3. ten thousand dollars (\$10,000) to repair the Truchas acequia in Truchas in Rio Arriba county;

4. twenty thousand dollars (\$20,000) for repair work, including maintenance work, on the Espinoza lateral ditch in Chimayo in Rio Arriba county;

5. five thousand dollars (\$5,000) to repair El Pueblito ditch for Los Trigos ditch association in San Miguel county;

6. five thousand dollars (\$5,000) to install water gates for ditches originating from the Gallinas river in San Miguel county;

7. five thousand dollars (\$5,000) to repair the ditch and replace culverts and water gates on the Acequia de la Agua Caliente in San Miguel county;

8. two thousand five hundred dollars (\$2,500) to repair the ditch and replace culverts and water gates on the Tecolote acequia in San Miguel county;

9. ten thousand dollars (\$10,000) for improvements to El Pueblo community ditch in San Miguel county;

10. ten thousand dollars (\$10,000) for culverts for the Arroyo Hondo acequia association in Taos county;

11. twenty-five thousand dollars (\$25,000) for repairs for the flood gate in the Acequia de El Valle association in Taos county;

12. one hundred thousand dollars (\$100,000) to improve the Acequia Madre de la Joya and La Joya acequia in Socorro county;

13. six thousand dollars (\$6,000) to renovate the northside community ditch in Leyba in San Miguel county;

14. twenty-eight thousand dollars (\$28,000) for a concrete floor and wall structure for the Espinoza ditch in Rio Arriba county; and

15. twenty thousand dollars (\$20,000) for improvements to acequia Ranchitos in Rio Arriba county.

Section 14. ENVIRONMENT PROJECTS--DEPARTMENT OF ENVIRONMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of environment that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of environment for the following purposes:

1. seventy-five thousand dollars (\$75,000) for designing and constructing a water system for the Carnuel mutual domestic water and wastewater consumers association in Bernalillo county;

2. one hundred fifty thousand dollars (\$150,000) for cleanup of the Eubank landfill in Albuquerque in Bernalillo county;

3. twenty-five thousand dollars (\$25,000) to equip and purchase a vehicle for the East Mountain transfer station in Bernalillo county;

4. two hundred ninety thousand dollars (\$290,000) to acquire property for, plan, design and construct an expansion of the sanitary sewer system within areas I and J in the north valley of Albuquerque in Los Ranchos de Albuquerque in Bernalillo county;

5. ten thousand dollars (\$10,000) to renovate a water tank in Grants in Cibola county;

6. ten thousand dollars (\$10,000) to purchase water equipment for Grants in Cibola county;

7. thirty-five thousand dollars (\$35,000) to plan and design the Cubero wastewater system in Cibola county;

8. twenty-five thousand dollars (\$25,000) to purchase water meters for Cimarron in Colfax county;

9. one hundred thousand dollars (\$100,000) for the design of a water and wastewater system for the Dona Ana mutual domestic water consumers association in Dona Ana county;

10. twenty thousand five hundred dollars (\$20,500) for installation of a new sewer line on Callejon Guerra in Mesilla in Dona Ana county;

11. ninety thousand dollars (\$90,000) for the construction of an administration building and water system improvements for La Union domestic water association in Dona Ana county;

12. ten thousand dollars (\$10,000) for the design of a water and wastewater system for the Dona Ana mutual domestic water consumers association in Dona Ana county;

13. five thousand dollars (\$5,000) for the San Luis water project in San Luis in Sandoval county;

14. fifty thousand dollars (\$50,000) to construct phase 2, including effluent ponds and a major sewer interceptor, to meet environmental protection agency regulations for the Artesia wastewater treatment plant in Eddy county;

15. twenty-five thousand dollars (\$25,000) for construction of phase 2 water system improvements and additional loop lines for the Cottonwood rural water cooperative in Eddy county;

16. fifty thousand dollars (\$50,000) to replace water lines and make water system improvements in Lovington in Lea county;

17. twenty-five thousand dollars (\$25,000) to purchase a wastewater vacuum truck in Lovington in Lea county;

18. one hundred thousand dollars (\$100,000) to upgrade the sewer system in the General Camp subdivision in Jal in Lea county;

19. seventy-five thousand dollars (\$75,000) for the construction, replacement and upgrade of water lines in Ruidoso Downs in Lincoln county;

20. forty-seven thousand five hundred dollars (\$47,500) to design, construct and equip a solid waste transfer station and recycling center for the Lincoln county solid waste authority;

21. ninety-five thousand dollars (\$95,000) to build a new Bayo wastewater treatment plant, demolish the old facility and restore the old site in Los Alamos county;

22. twenty-five thousand dollars (\$25,000) to plan, design and construct water lines to Pecan park in Deming in Luna county;

23. forty thousand dollars (\$40,000) to purchase equipment for the northwest New Mexico regional solid waste authority in Thoreau in McKinley county;

24. fifty thousand dollars (\$50,000) to purchase and install a water tank for the Rainsville domestic water and sanitation district in Mora county;

25. seventy thousand dollars (\$70,000) for phase 1 improvements to the Cloudcroft wastewater treatment plant in Otero county;

26. thirty thousand dollars (\$30,000) to replace the water line on South Florida avenue and update service meters and connections in Alamogordo in Otero county;

27. thirty thousand dollars (\$30,000) for water line replacement and related street improvements on Alaska avenue in Alamogordo in Otero county;

28. forty-five thousand dollars (\$45,000) to repair, renovate and expand the wastewater treatment plant in Tucumcari in Quay county;

29. seventy-five thousand dollars (\$75,000) to engineer, plan, design and construct improvements, including water line extensions, for the upper La Plata water users association in San Juan county;

30. seventy-five thousand dollars (\$75,000) to engineer, plan, design and construct improvements, including water line extensions, for the upper La Plata water users association in San Juan county;

31. two hundred nineteen thousand dollars (\$219,000) to construct a reservoir in Aztec in San Juan county;

32. five thousand eight hundred ninety-two dollars (\$5,892) to improve and replace water lines, including meters, for the Ilfeld mutual domestic water consumers association in San Miguel county;

33. eighty thousand dollars (\$80,000) to continue the engineering analysis and to construct a wastewater system in the town of Cochiti Lake in Sandoval county;

34. fifteen thousand dollars (\$15,000) for water system improvements for the Canoncito at Apache Canyon mutual domestic water consumers association in Santa Fe county;

35. forty thousand dollars (\$40,000) for improvements to the Cerrillos water system in Santa Fe county;

36. fifty thousand dollars (\$50,000) for an environmental assessment for the Cuatro Villas mutual domestic water users association in Santa Fe county;

37. thirty-five thousand dollars (\$35,000) to construct a domestic water distribution system for the Solacito mutual domestic water consumers association in Santa Fe county;

38. twenty-five thousand dollars (\$25,000) to improve the water system for the Cundiyo municipal domestic water association in Cundiyo in Santa Fe county;

39. one hundred thousand dollars (\$100,000) to plan, design and construct the extension of a sewer line from Rufina street to Agua Fria road through Camino Polvoso in Santa Fe county;

40. twenty-five thousand dollars (\$25,000) to design an effluent water line to serve public schools and parks in Tierra Contenta in Santa Fe county;

41. two hundred thousand dollars (\$200,000) to improve, upgrade and equip the Santa Fe water treatment facility in Santa Fe county;

42. fifty thousand dollars (\$50,000) for improvements to the Santa Fe wastewater system in the Rancho Golondrinas area in Santa Fe county;

43. one hundred forty thousand dollars (\$140,000) for pumps and pipelines to transport treated effluent water from the wastewater treatment plant to the municipal golf course and school athletic fields for irrigation in Truth or Consequences in Sierra county;

44. twenty thousand dollars (\$20,000) for improvements to the Canon mutual domestic water consumers association in Taos county;

45. twenty-five thousand dollars (\$25,000) for improvements to the water and wastewater systems in Taos Ski Valley in Taos county;

46. twenty-five thousand dollars (\$25,000) for construction and repairs on the water system for the Trampas mutual domestic water consumers association in Taos county;

47. sixty thousand dollars (\$60,000) to repair and upgrade the sewer and water systems in Mountainair in Torrance county;

48. five thousand dollars (\$5,000) for the repair and reconditioning of the water tower in Clayton in Union county;

49. two hundred twenty-five thousand dollars (\$225,000) to replace water well number 4 in Belen in Valencia county;

50. fifty thousand dollars (\$50,000) for construction of a water well and water line for the Aragon mutual domestic water consumers association in Catron county;

51. fifty thousand dollars (\$50,000) for the design and construction of a water well and water storage tank for the Carnuel mutual domestic water and wastewater consumers association in Carnuel in Bernalillo county;

52. thirty thousand dollars (\$30,000) for the planning, designing, constructing and equipping of a water system in the community of Pastura in Guadalupe county;

53. fifty thousand dollars (\$50,000) for land acquisition for and design of a solid waste transfer and recycling center outside of Ruidoso Downs in Lincoln county;

54. twenty-five thousand dollars (\$25,000) to repair and improve the water system in Arroyo Hondo in Taos county;

55. twenty-five thousand dollars (\$25,000) to improve and equip the water system for El Salto mutual domestic water consumers association in Taos county;

56. one hundred thousand dollars (\$100,000) to improve the water system, including construction of a water storage tank system, in Questa in Taos county;

57. one hundred thousand dollars (\$100,000) for phase 1 improvements to the Cloudcroft wastewater treatment plant in Otero county;

58. fifty thousand dollars (\$50,000) to purchase water equipment for Grants in Cibola county;

59. fifty thousand dollars (\$50,000) to plan, design and construct a water and wastewater system in Cubero in Cibola county;

60. sixty-four thousand dollars (\$64,000) for improvements to the wastewater treatment facility in Tucumcari in Quay county;

61. fifteen thousand dollars (\$15,000) for water meter replacement in Cimarron in Colfax county;
62. thirty thousand dollars (\$30,000) for improvements to the sewer lagoons in Cimarron in Colfax county;
63. twenty thousand dollars (\$20,000) for the development of a master sewage system for Angel Fire in Colfax county;
64. fifty thousand dollars (\$50,000) for the improvement and expansion of the sewer and water lines in Eagle Nest in Colfax county;
65. fifty thousand dollars (\$50,000) for construction of a water line in Bloomfield in San Juan county;
66. fifty thousand dollars (\$50,000) for the construction of a water line for the Flora Vista water users association in Flora Vista in San Juan county;
67. twenty-five thousand dollars (\$25,000) for the purchase of a wastewater vacuum truck for Lovington in Lea county;
68. one hundred thousand dollars (\$100,000) for phase 1 improvements to the Cloudcroft wastewater treatment plant in Otero county;
69. fifty thousand dollars (\$50,000) to purchase a wastewater vacuum truck in Lovington in Lea county;
70. one hundred thousand dollars (\$100,000) to purchase and install a security system for the Jal water system in Lea county;
71. fifty thousand dollars (\$50,000) for water system improvements for the Canoncito at Apache Canyon mutual domestic water consumers association in Santa Fe county;
72. five hundred thousand dollars (\$500,000) to improve and upgrade the Santa Fe water treatment facility in Santa Fe county;
73. twenty-five thousand dollars (\$25,000) for plumbing and wiring for a well for the Agua Sana water users association in Rio Arriba county;
74. twenty-five thousand dollars (\$25,000) to purchase land for the Agua Sana water users association in Rio Arriba county;
75. fifty thousand dollars (\$50,000) for sewer line extension and improvements to the sewer system in Chama in Rio Arriba county;

76. twenty thousand dollars (\$20,000) for the purchase of equipment for the Berino mutual domestic water consumers association in Dona Ana county;

77. forty-six thousand dollars (\$46,000) for a water line extension near Estrada road in Mesilla in Dona Ana county;

78. sixteen thousand dollars (\$16,000) for water and wastewater system design for the Dona Ana mutual domestic water consumers association in Dona Ana county;

79. twenty thousand dollars (\$20,000) to purchase equipment for the Berino mutual domestic water consumers association in Dona Ana county;

80. fifty thousand dollars (\$50,000) to expand the wastewater treatment plant in Gallup in McKinley county;

81. fifty thousand dollars (\$50,000) to replace the water line on Maloney street in Gallup in McKinley county;

82. forty thousand dollars (\$40,000) to purchase land and make infrastructure improvements for the Elephant Butte north area wastewater facility in Sierra county;

83. one hundred thousand dollars (\$100,000) for improvements to the domestic water well, including the purchase and installation of meters, for the Agua Fria water association in Santa Fe county;

84. ten thousand dollars (\$10,000) for water system improvements and easement acquisitions on Santa Fe county road 54;

85. twenty-five thousand dollars (\$25,000) for phase 3 water and sewer improvements on Agua Fria road in Santa Fe county;

86. fifty thousand dollars (\$50,000) to improve and upgrade the Santa Fe water treatment facility in Santa Fe county;

87. forty thousand dollars (\$40,000) for the domestic water association in the community of Agua Fria in Santa Fe county; and

88. one hundred seventy-five thousand dollars (\$175,000) for pumps and pipelines to transport treated effluent water from the wastewater treatment plant to the municipal golf course and school athletic fields for irrigation in Truth or Consequences in Sierra county.

Section 15. WASTEWATER FACILITY CONSTRUCTION LOAN FUND--DEPARTMENT OF ENVIRONMENT--SEVERANCE TAX

BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of environment that the need exists for the issuance of the bonds, three million dollars (\$3,000,000) is appropriated to the wastewater facility construction loan fund to assist local governments in financing the construction of critical wastewater facilities statewide.

Section 16. STATE FAIR PROJECTS--STATE FAIR COMMISSION--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the state fair commission that the need exists for the issuance of the bonds, the following amounts are appropriated to the state fair commission for the following purposes:

1. five thousand dollars (\$5,000) for improvements and infrastructure needs at the New Mexico state fair in Albuquerque in Bernalillo county;
2. twenty-five thousand dollars (\$25,000) for roof repairs at the swine barn and for improvements and infrastructure needs at the New Mexico state fair in Albuquerque in Bernalillo county;
3. one million six hundred two thousand dollars (\$1,602,000) to improve facilities and infrastructure at the New Mexico state fair in Albuquerque in Bernalillo county;
4. sixty thousand dollars (\$60,000) for upgrading the electrical system at the African-American pavilion at the New Mexico state fair in Albuquerque in Bernalillo county;
5. twenty-five thousand dollars (\$25,000) for improvements and infrastructure needs at the New Mexico state fair in Albuquerque in Bernalillo county; and
6. ten thousand dollars (\$10,000) for improvements and infrastructure needs at the New Mexico state fair in Albuquerque in Bernalillo county.

Section 17. DIGITAL MICROWAVE PROJECT--GENERAL SERVICES DEPARTMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the general services department that the need exists for the issuance of the bonds, two million dollars (\$2,000,000) is appropriated to the

general services department to continue the development of a digital microwave communications backbone for the state.

Section 18. HIGHWAY PROJECTS--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--SEVERANCE TAX BONDS.--

Pursuant to the provisions of Section 1 of this act, upon certification by the state highway and transportation department that the need exists for the issuance of the bonds, the following amounts are appropriated to the state highway and transportation department for the following purposes:

1. seventy thousand dollars (\$70,000) for improvements to Loma Larga road in Corrales in Bernalillo and Sandoval counties;
2. ten thousand dollars (\$10,000) to purchase and install a visitor welcome sign for Corrales in Bernalillo and Sandoval counties;
3. one thousand dollars (\$1,000) to repair and purchase street signs for various village roads in Corrales in Bernalillo and Sandoval counties;
4. ten thousand dollars (\$10,000) to improve and construct the extension of McMahan boulevard from Unser boulevard to the Coors bypass in Albuquerque in Bernalillo county;
5. two thousand dollars (\$2,000) to plan, design and construct an extension of University boulevard to Mesa del Sol in Albuquerque in Bernalillo county;
6. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the access road to the west side shooting park in Albuquerque in Bernalillo county;
7. twelve thousand five hundred dollars (\$12,500) for extension of Paseo del Norte and Unser boulevard in Albuquerque in Bernalillo county;
8. four thousand five hundred dollars (\$4,500) for design, land acquisition, roadway construction, walkways, bike paths, landscaping, utilities and associated improvements on Paseo del Volcan in Albuquerque in Bernalillo county;
9. one hundred thousand dollars (\$100,000) to plan, design and construct an extension of University boulevard to Mesa del Sol in Albuquerque in Bernalillo county;

10. thirty thousand dollars (\$30,000) to plan, design and construct a joint-use bicycle and pedestrian trail and landscaping improvements on the southeast corner of Montgomery and Tramway boulevards in Albuquerque in Bernalillo county;

11. ten thousand dollars (\$10,000) to plan, design and construct an extension of University boulevard to Mesa del Sol in Albuquerque in Bernalillo county;

12. thirty-eight thousand dollars (\$38,000) for asphalt overlay on Marez road from the intersection with Atrisco drive east to the end of the road in the south valley area of Bernalillo county;

13. thirty-four thousand dollars (\$34,000) for asphalt overlay and base preparation on Shipman road southwest of Foothill drive to the end of the road in the south valley area of Bernalillo county;

14. twenty thousand dollars (\$20,000) for asphalt overlay on Wilbur road from the intersection with Tapia boulevard west to the end of the road in the south valley area of Bernalillo county;

15. fifty thousand dollars (\$50,000) to upgrade and pave Pinon trail in the east mountain area of Bernalillo county;

16. thirty thousand dollars (\$30,000) for asphalt overlay on San Diego avenue, west of Barstow street, in Albuquerque in Bernalillo county;

17. thirty-five thousand dollars (\$35,000) for asphalt overlay on Barstow street between Florence avenue and Elena street in Albuquerque in Bernalillo county;

18. seventy-five thousand dollars (\$75,000) for asphalt overlay on Modesto avenue between Eubank boulevard and Ventura street in Albuquerque in Bernalillo county;

19. one hundred thousand dollars (\$100,000) to plan, design and construct an extension of University boulevard to Mesa del Sol in Albuquerque in Bernalillo county;

20. thirty thousand dollars (\$30,000) to plan, design and construct a bicycle trail and pedestrian and landscaping improvements on the southeast corner of Montgomery and Tramway boulevards in Albuquerque in Bernalillo county;

21. twenty-three thousand dollars (\$23,000) for paving and improving Paseo del Banco in the south valley in Bernalillo county;

22. fifty-two thousand dollars (\$52,000) for paving and improving Zartman road in the south valley in Bernalillo county;

23. twenty-five thousand dollars (\$25,000) to plan, design and construct an extension of University boulevard to Mesa del Sol in Albuquerque in Bernalillo county;

24. thirty thousand dollars (\$30,000) to reconstruct and incorporate improvements to Fourth street NW from Solar road to Douglas MacArthur road in Albuquerque in Bernalillo county;

25. ten thousand dollars (\$10,000) for traffic-calming devices and streetlights on Lakeview road east of Isleta boulevard in Bernalillo county;

26. ten thousand dollars (\$10,000) for road improvements, including resurfacing, to Del Rio road in Bernalillo county;

27. twenty thousand dollars (\$20,000) for road improvements, including resurfacing, to Durand road in Bernalillo county;

28. ten thousand dollars (\$10,000) for road improvements, including resurfacing, to Condeshire road in Bernalillo county;

29. thirty thousand dollars (\$30,000) to plan, design and construct a bicycle trail and pedestrian trail and landscaping improvements on the southeast corner of Montgomery and Tramway boulevards in Albuquerque in Bernalillo county;

30. thirty thousand dollars (\$30,000) to plan, design and construct an extension of University boulevard to Mesa del Sol in Albuquerque in Bernalillo county;

31. twenty-five thousand dollars (\$25,000) for a traffic signal at Paseo del Norte and Browning avenue in Albuquerque in Bernalillo county;

32. two thousand dollars (\$2,000) to plan, design and construct or purchase a temporary speed bump on Parsifal street NE at Osuna road in Albuquerque in Bernalillo county;

33. one hundred fifty thousand dollars (\$150,000) to plan, design and construct an extension of University boulevard to Mesa del Sol in Albuquerque in Bernalillo county;

34. one hundred thousand dollars (\$100,000) for improvements to Paseo del Norte from Eagle Ranch road to Golf Course road in Albuquerque in Bernalillo county;

35. fifty thousand dollars (\$50,000) to improve and construct the extension of McMahan boulevard from Unser boulevard to the Coors bypass in Albuquerque in Bernalillo county;

36. sixty thousand dollars (\$60,000) to plan, design, construct and equip speed and traffic control measures on various village roads in Los Ranchos de Albuquerque in Bernalillo county;

37. twenty thousand dollars (\$20,000) to improve one-half mile of Atkinson road, including paving, widening and building curbs and gutters, in Chaves county;

38. one hundred thousand dollars (\$100,000) for improvements on roads in Curry county;

39. twenty-five thousand dollars (\$25,000) for improvements on Curry county road 11 between New Mexico state highway 108 and the Texas state line;

40. ninety thousand dollars (\$90,000) to survey, design, compact and asphalt Eagle's Nest road in Dona Ana in Dona Ana county;

41. seventy thousand dollars (\$70,000) for improvements to Payan road in Dona Ana county;

42. eleven thousand dollars (\$11,000) for improvements to the roads in Rodey in Dona Ana county;

43. ten thousand dollars (\$10,000) to reconstruct Shenandoah road in Dona Ana county;

44. thirty thousand dollars (\$30,000) to construct sidewalks on Cedar street from Fourth to Eighth streets in Loving in Eddy county;

45. one hundred thousand dollars (\$100,000) to design, improve and construct the main storm drainage ditch in Hurley in Grant county;

46. thirty thousand dollars (\$30,000) to provide state matching funds for a federal grant to purchase equipment for the Corre Caminos transit system in Grant county;

47. ten thousand dollars (\$10,000) for street improvements in Roy in Harding county;

48. ten thousand dollars (\$10,000) for road improvements in Mosquero in Harding county;

49. fifty thousand dollars (\$50,000) to improve and repair roads in Lea county;

50. seventy-five thousand dollars (\$75,000) to improve the streets in Tatum in Lea county;

51. one hundred thousand dollars (\$100,000) for chip and slurry seal improvements on west Marland street, south Grimes street and the truck bypass in Hobbs in Lea county;
52. ten thousand dollars (\$10,000) to improve and repair roads in Lea county;
53. one hundred thousand dollars (\$100,000) for phase 1 extension of Cedar street in Deming in Luna county;
54. twelve thousand five hundred dollars (\$12,500) for road and drainage improvements in the Homer C. Jones subdivision at Bluewater lake in McKinley county;
55. twenty-five thousand dollars (\$25,000) for phase 1 improvements, including right-of-way acquisition, surveys and archaeological clearances, on Burnt Corn road in the Iyanbito chapter of the Navajo Nation in McKinley county;
56. thirty thousand dollars (\$30,000) to pave roads for the Thoreau chapter of the Navajo Nation in McKinley county;
57. twenty-five thousand dollars (\$25,000) to widen and extend South Florida avenue from the armory to Desert Lakes road in Alamogordo in Otero county;
58. fifty thousand dollars (\$50,000) to construct drainage culverts and make related repairs to conduct water from the La Luz and Laborcita canyons under Riata road in Otero county;
59. one hundred twenty-five thousand dollars (\$125,000) to construct road connectors for the Alamogordo relief route in Otero county;
60. twenty-five thousand dollars (\$25,000) to purchase and install a traffic signal at Puerto Rico avenue and Indian Wells road in Alamogordo in Otero county;
61. twenty-five thousand dollars (\$25,000) for county road improvements in Quay county;
62. forty thousand dollars (\$40,000) for upgrading the sidewalks and parking area and landscaping along Fir street, a city road in Portales in Roosevelt county;
63. one hundred thousand dollars (\$100,000) for paving and curb improvements for North Abilene road in Portales in Roosevelt county;
64. fifteen thousand dollars (\$15,000) for various streets, curbs and gutters for the north side of Portales in Roosevelt county;

65. forty-five thousand dollars (\$45,000) for repair of streets, curbs and gutters on Elgin from Elbe to Danube and on Fargo from Canadian to Third street in Portales in Roosevelt county;

66. twenty thousand dollars (\$20,000) for improvements to county roads in Roosevelt county;

67. one hundred fifty thousand dollars (\$150,000) to improve, widen and build a bridge on county road 3500 in San Juan county;

68. fifty thousand dollars (\$50,000) for chip seal and overlay on county road 6480 in San Juan county;

69. fifty thousand dollars (\$50,000) for chip seal and overlay on county roads 6400 and 6500 in San Juan county;

70. thirty thousand dollars (\$30,000) for storm drainage improvements on Johnson street in Bloomfield in San Juan county;

71. fifty thousand dollars (\$50,000) for chip seal and overlay on county road 3050 in San Juan county;

72. five thousand dollars (\$5,000) for improvements to the county roads in the Sabinosa area of San Miguel county;

73. thirty thousand dollars (\$30,000) for improvements to El Llano road, a county road in San Miguel county;

74. ten thousand dollars (\$10,000) for the repair and improvement of various county roads and drainage in Tecolote in San Miguel county;

75. five thousand dollars (\$5,000) for improvements to Ribera and El Coruco roads, also known as county roads A-40-A and A-40-B, in San Miguel county;

76. thirty thousand dollars (\$30,000) for various county road improvements related to the cattle guard project in San Miguel county;

77. five thousand dollars (\$5,000) for improvements to county road A-30 in San Miguel county;

78. twenty thousand dollars (\$20,000) for improvements to roads in Sena in San Miguel county;

79. twenty thousand dollars (\$20,000) for improvements to roads in Lovato in San Miguel county;

80. forty thousand dollars (\$40,000) to develop and improve Pipeline road in Sandoval county;

81. one hundred sixty-five thousand dollars (\$165,000) to install traffic signals and construct turn lanes for traffic emerging onto Iris boulevard from the Rio Rancho mid-high school at Fortieth street and Rio Rancho high school at Loma Colorado in Rio Rancho in Sandoval county;

82. one hundred thousand dollars (\$100,000) for a traffic signal at New Mexico highway 528 and Idalia road in Sandoval county;

83. ten thousand dollars (\$10,000) for traffic signals at New Mexico highway 528 and Idalia road and at New Mexico highway 528 and Riverside drive in Rio Rancho in Sandoval county;

84. one hundred thousand dollars (\$100,000) for road upgrading, resurfacing, base materials, slurry, chip sealing and paving of Monte Alto road, a county road in Eldorado in Santa Fe county;

85. thirty-five thousand dollars (\$35,000) to construct a pedestrian pathway in Eldorado in Santa Fe county;

86. eighty thousand dollars (\$80,000) to purchase and install a railroad crossing signal at Avenida Eldorado in Santa Fe county;

87. seventy-five thousand dollars (\$75,000) to construct and pave Dinkle road in Santa Fe county;

88. eighteen thousand five hundred dollars (\$18,500) to design, purchase materials for and pave a section of county road 8 in Edgewood in Santa Fe county;

89. thirty thousand dollars (\$30,000) to reconstruct and pave county road 55 in Santa Fe county;

90. fifty thousand dollars (\$50,000) to resurface county roads within La Tierra subdivision northwest of Santa Fe in Santa Fe county;

91. twenty-five thousand dollars (\$25,000) to plan, design and construct phase 3 water, sewer, drainage and paving improvements on Agua Fria road in Santa Fe county;

92. twenty-five thousand dollars (\$25,000) to design and construct a bridge and an approach road on South Meadows road from Agua Fria road to the entrance of Cottonwood park in Santa Fe county;

93. one hundred twenty-five thousand dollars (\$125,000) for road improvements, including curbs, gutters, sidewalks and pavement, on Paseo de Conquistador in Santa Fe county;

94. seventy-four thousand five hundred dollars (\$74,500) for improvements to Sunrise road in Santa Fe county;

95. one hundred thousand dollars (\$100,000) to pave Balboa and Hallmark streets in Elephant Butte in Sierra county;

96. fifty thousand dollars (\$50,000) to improve Camino de Abajo in Taos county;

97. one hundred thirty-six thousand dollars (\$136,000) to pave roads in the Los Ranchitos subdivision in Valencia county;

98. thirty-five thousand dollars (\$35,000) for paving La Madera road in Sandoval county;

99. one hundred thousand dollars (\$100,000) to make improvements to county road 16, also known as Frost road, and county road 8, also known as Dinkle road, in Santa Fe county;

100. one hundred fifty thousand dollars (\$150,000) to widen and realign and install sidewalks, streetlights, curbs, gutters and ramps on the First street roadway in Alamogordo in Otero county;

101. fifteen thousand dollars (\$15,000) to purchase and install flashing beacons on Southern boulevard at Rainbow park in Rio Rancho in Sandoval county;

102. one hundred thousand dollars (\$100,000) for improvements to Pendaries road, also known as county road A-4-A, and county road A-30 in San Miguel county;

103. eighteen thousand six hundred dollars (\$18,600) for improvements, including paving and drainage, to county road 84E in Santa Fe county;

104. fifty thousand dollars (\$50,000) for road improvements in Curry county;

105. twenty-five thousand dollars (\$25,000) for improvements to county roads in the Big Mesa area of San Miguel county;

106. thirty thousand dollars (\$30,000) for the construction of a road to provide access to the Montoya industrial park in Raton in Colfax county;

107. eighty thousand dollars (\$80,000) for improvements to county road D from county road 18 to county road 19 in Curry county;

108. one hundred thousand dollars (\$100,000) for road improvements in Fort Sumner in De Baca county;

109. fifty thousand dollars (\$50,000) for street improvements in Melrose in Curry county;

110. one hundred thousand dollars (\$100,000) for improvements to county road L from county road 4 to county road 6 in Curry county;

111. sixty-five thousand dollars (\$65,000) to improve Burlington Northern Santa Fe railroad crossings in Portales in Roosevelt county;

112. fifty thousand dollars (\$50,000) for street improvements in Tatum in Lea county;

113. one hundred thousand dollars (\$100,000) for improvements on roads in Curry county;

114. fifty thousand dollars (\$50,000) for streets, curbs and gutters for the north side of Portales in Roosevelt county;

115. one hundred thousand dollars (\$100,000) for improvements to Fruta road in Rio Rancho in Sandoval county;

116. fifteen thousand dollars (\$15,000) to construct and improve sidewalks on Cedar street in Loving in Eddy county;

117. forty thousand dollars (\$40,000) to improve county road 86A and county road 89 in Rio Arriba county;

118. sixty thousand dollars (\$60,000) to place base course on county road 0001 in Hernandez in Rio Arriba county;

119. twenty thousand dollars (\$20,000) to place base course on county roads in Rio Arriba county;

120. ten thousand dollars (\$10,000) for improvements to county roads in county commission district 3 in Rio Arriba county;

121. ten thousand dollars (\$10,000) for road signs at the intersection of New Mexico highway 478 and New Mexico highway 228 in Mesquite in Dona Ana county;

122. seventy-five thousand dollars (\$75,000) for improvements to Shiprock and Hot Pepper street in Chaparral in Dona Ana county;
123. forty-four thousand dollars (\$44,000) for a water line from Union to Avenida de Mesilla in Mesilla in Dona Ana county;
124. sixty thousand dollars (\$60,000) to resurface Estrada road in Mesilla in Dona Ana county;
125. thirty thousand dollars (\$30,000) to pave roads, including Leyendecker road, Victoria road and west Provencio road, in Dona Ana county;
126. one hundred thousand dollars (\$100,000) for improving county roads 7800, 7150, 7750 and 7950 in San Juan county;
127. twenty thousand dollars (\$20,000) to acquire easements and plan, design and construct a bridge for the Rock Springs chapter of the Navajo Nation in McKinley county;
128. forty thousand dollars (\$40,000) to purchase and install school zone warning signals and speed signs on United States highway 666 at the Chee Dodge elementary school for the Navajo Nation in McKinley county;
129. fifty thousand dollars (\$50,000) for construction of phase 2 of the Mendoza boulevard extension project in McKinley county;
130. twenty-five thousand dollars (\$25,000) to surface and make improvements to county road 2 in McKinley county;
131. thirty thousand dollars (\$30,000) for improvements to the access road leading to the community pantry from Hasler Valley road in McKinley county;
132. one hundred eleven thousand dollars (\$111,000) to improve and construct Fourteenth street in Las Cruces in Dona Ana county;
133. ninety-nine thousand dollars (\$99,000) to pave Hallmark and Balboa streets in Elephant Butte in Sierra county;
134. ten thousand dollars (\$10,000) for improvements to Hanger Lake road in Dona Ana county;
135. seventy thousand dollars (\$70,000) for improvements to MacArthur road in Dona Ana county;
136. thirty-five thousand dollars (\$35,000) for improvements to Apache trail in Dona Ana county;

137. thirty-five thousand dollars (\$35,000) for improvements to Sioux trail in Dona Ana county;

138. seventy-five thousand dollars (\$75,000) for improvements to Easy lane in Dona Ana county;

139. twenty-five thousand dollars (\$25,000) to plan and design a low-water crossing on Camino Carlos Rael in Santa Fe county;

140. sixty thousand dollars (\$60,000) to construct curbs, gutters and sidewalks on Atrisco road between Central avenue and Five Points boulevard in Bernalillo county;

141. one hundred thousand dollars (\$100,000) for improvements to Camino Los Chavez county road in Valencia county;

142. twenty-five thousand dollars (\$25,000) for improvements to San Juan county roads 6400 and 6500;

143. eighty-five thousand dollars (\$85,000) for phase 1 extension of Cedar street in Deming in Luna county;

144. fifty thousand dollars (\$50,000) to purchase street paving vehicles and maintenance vehicles for Lordsburg in Hidalgo county; and

145. one hundred fifty thousand dollars (\$150,000) to make road improvements in Torreon and San Luis in Sandoval county.

Section 19. CIVIL AIR PATROL PROJECTS--AVIATION DIVISION--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the aviation division of the state highway and transportation department that the need exists for the issuance of the bonds, the following amounts are appropriated to the aviation division of the state highway and transportation department for the following purposes:

1. one hundred twenty-five thousand dollars (\$125,000) to design, construct and equip a hangar and office facility for the civil air patrol at the Farmington airport in San Juan county; and

2. thirty thousand dollars (\$30,000) to construct and equip a hangar for the civil air patrol at the Taos regional airport in Taos county.

Section 20. HOUSING AUTHORITY PROJECTS--DEPARTMENT OF FINANCE AND ADMINISTRATION--SEVERANCE TAX BONDS.--

Pursuant to the provisions of Section 1 of this act, upon certification by the department of finance and administration that the need exists for the issuance of the bonds, six hundred thousand dollars (\$600,000) is appropriated to the department of finance and administration to make energy-efficient improvements to dwellings owned or occupied by low-income persons.

Section 21. INDIAN PROJECTS--NEW MEXICO OFFICE OF INDIAN AFFAIRS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the New Mexico office of Indian affairs that the need exists for the issuance of the bonds, the following amounts are appropriated to the New Mexico office of Indian affairs for the following purposes:

1. forty thousand dollars (\$40,000) to plan, design and construct a recreation center park at the Pueblo of Isleta in Bernalillo and Valencia counties;
2. fifty thousand dollars (\$50,000) for a health care facility at the To'hajiilee chapter of the Navajo Nation in Bernalillo county;
3. twenty-five thousand dollars (\$25,000) for improvements, including lighting, for outdoor basketball courts at the To'hajiilee chapter of the Navajo Nation in Bernalillo county;
4. thirty-five thousand dollars (\$35,000) to improve and expand a wastewater lagoon in Pine Hill for the Ramah chapter of the Navajo Nation in Cibola county;
5. fifteen thousand dollars (\$15,000) to plan and design an outdoor youth recreation center for the Ramah chapter of the Navajo Nation in Cibola county;
6. twenty-five thousand dollars (\$25,000) to plan, design and construct the renovation of the youth center at the Pueblo of Zuni in McKinley county;
7. twenty-five thousand dollars (\$25,000) to plan, design and construct an outdoor pedestrian running track and install fencing at the Shiwi Tsana park at the Pueblo of Zuni in McKinley county;
8. twenty-five thousand dollars (\$25,000) to plan, design, construct and equip a facility and pave the parking lot at the Bread Springs chapter of the Navajo Nation in McKinley county;

9. ten thousand five hundred dollars (\$10,500) to complete a powerline extension for the Pinedale chapter of the Navajo Nation in McKinley county;

10. fifty thousand dollars (\$50,000) to plan, design and construct a wastewater system for the Coyote Canyon chapter of the Navajo Nation in McKinley county;

11. fifty thousand dollars (\$50,000) to plan, design and construct a police substation in the Rock Springs chapter of the Navajo Nation in McKinley county;

12. thirty thousand dollars (\$30,000) to design and construct a kitchen addition for the head start modular building at the White Horse Lake chapter of the Navajo Nation in McKinley county;

13. forty thousand dollars (\$40,000) for an ambulance for the Pueblo of Laguna in Bernalillo, Sandoval and Cibola counties;

14. fifty thousand dollars (\$50,000) for improvements and construction at the fire department in Mescalero in Otero county;

15. thirty thousand dollars (\$30,000) for improvements and construction at the fire department and for the wastewater treatment plant in Mescalero in Otero county;

16. ten thousand dollars (\$10,000) to construct the final phase of the arts, crafts, visitor and administration center for the eight northern Indian pueblos council in the Pueblo of San Juan in Rio Arriba county;

17. twenty-five thousand dollars (\$25,000) for renovation, repair and improvements to the neighborhood facility in the Pueblo of Santa Clara in Rio Arriba county;

18. thirty-five thousand dollars (\$35,000) to construct and equip the final phase of the arts, crafts, visitor and administration center for the eight northern Indian pueblos council in the Pueblo of San Juan in Rio Arriba county;

19. twenty thousand dollars (\$20,000) to purchase and install security and fencing for the gymnasium in the Pueblo of San Juan in Rio Arriba county;

20. fifty-five thousand dollars (\$55,000) to renovate the community library in the Pueblo of San Juan in Rio Arriba county;

21. ten thousand dollars (\$10,000) to purchase gymnasium maintenance equipment in the Pueblo of San Juan in Rio Arriba county;

22. one hundred thousand dollars (\$100,000) to plan, design and construct an addition to the chapter house for the Beclabito chapter of the Navajo Nation in San Juan county;
23. twenty-five thousand dollars (\$25,000) to renovate and landscape Veterans' park at the Nenahnezad chapter of the Navajo Nation in San Juan county;
24. fifty thousand dollars (\$50,000) for planning and designing the farm irrigation system at the Gadii'ahi chapter of the Navajo Nation in San Juan county;
25. forty thousand dollars (\$40,000) to purchase a vehicle for the San Juan chapter of the Navajo Nation in San Juan county;
26. ninety thousand dollars (\$90,000) to construct an addition to the boys' and girls' club facility at the Shiprock chapter of the Navajo Nation in San Juan county;
27. fifty-five thousand dollars (\$55,000) for lighting for historic buildings at Navajo preparatory school in Farmington in San Juan county;
28. forty thousand dollars (\$40,000) for a photovoltaic solar power system for the Two Grey Hills chapter of the Navajo Nation in San Juan county;
29. ten thousand dollars (\$10,000) to plan, design, construct and rehabilitate the existing building for future classroom space at Navajo preparatory school in San Juan county;
30. thirty thousand dollars (\$30,000) for a water line extension, including clearances, right-of-way acquisition and construction, in the Crystal chapter of the Navajo Nation in San Juan county;
31. fifty thousand dollars (\$50,000) for bathroom additions at the Littlewater chapter of the Navajo Nation in McKinley county;
32. fifty thousand dollars (\$50,000) to plan, design and construct a community services building at the Pueblo of Jemez in Sandoval county;
33. two hundred fifty thousand dollars (\$250,000) to continue construction and make improvements to the head start and child-care facility for the Pueblo of Santa Ana in Sandoval county;
34. forty thousand dollars (\$40,000) to purchase a bus for the head start program at the Pueblo of Zia in Sandoval county;
35. five thousand dollars (\$5,000) to purchase a bus for the head start program at the Pueblo of Santa Ana in Sandoval county;

36. ten thousand dollars (\$10,000) to plan, design and construct a lifelong learning center at the institute of American Indian arts in Santa Fe county;

~~[37. ten thousand dollars (\$10,000) to plan, design and construct a lifelong learning center at the institute of American Indian arts in Santa Fe county;]~~

38. ten thousand dollars (\$10,000) to plan, design and construct a lifelong learning center at the institute of American Indian arts in Santa Fe county;

39. fifty thousand dollars (\$50,000) to equip and furnish the intergenerational wellness center at the Pueblo of Tesuque in Santa Fe county;

40. fifty thousand dollars (\$50,000) to construct phase 4 of the Pueblo of Pojoaque wellness and recreation center in Santa Fe county;

41. fifty thousand dollars (\$50,000) for phase 1 design and phase 2 construction of a multiple sports complex at the Santa Fe Indian school in Santa Fe in Santa Fe county;

42. ten thousand dollars (\$10,000) to plan, design and construct a lifelong learning center at the institute of American Indian arts in Santa Fe county;

43. thirty thousand dollars (\$30,000) for recreational fields at the Santa Fe Indian school in Santa Fe county;

44. ten thousand dollars (\$10,000) to plan, design and construct a lifelong learning center at the institute of American Indian arts in Santa Fe county;

45. fifty thousand dollars (\$50,000) to design and construct a wellness center for the Alamo chapter of the Navajo Nation in Socorro county;

46. fifty thousand dollars (\$50,000) to purchase and install water line extensions in the Alamo Navajo community in Socorro county;

47. twenty-five thousand dollars (\$25,000) for improvements to the Taos Pueblo education center in Taos county;

48. ten thousand dollars (\$10,000) to construct a child care center at southwestern Indian polytechnic institute in Albuquerque in Bernalillo county;

49. fifty thousand dollars (\$50,000) to construct phase 4 of the Pueblo of Pojoaque wellness and recreation center in Santa Fe county;

50. one hundred thousand dollars (\$100,000) to improve and equip the Pueblo of Pojoaque Poeh cultural center and museum in Santa Fe county;

51. twenty-five thousand dollars (\$25,000) for the construction of the arts and crafts visitor and administration center for the eight northern Indian pueblos council in the Pueblo of San Juan in Rio Arriba county;

52. forty-six thousand dollars (\$46,000) for an ambulance for the Pueblo of Laguna in Bernalillo, Sandoval and Cibola counties;

53. fifteen thousand dollars (\$15,000) to purchase a bus for the head start program at the Pueblo of Santa Ana in Sandoval county;

54. one hundred thousand dollars (\$100,000) for phase 1 design and phase 2 construction of a multiple sports complex at the Santa Fe Indian school in Santa Fe in Santa Fe county;

55. thirty-five thousand dollars (\$35,000) for the construction of the final phase of the arts, crafts, visitor and administration center for the eight northern Indian pueblos council in the Pueblo of San Juan in Rio Arriba county;

56. twenty-five thousand dollars (\$25,000) to repair and renovate the neighborhood facility at the Pueblo of Santa Clara in Rio Arriba, Santa Fe and Sandoval counties;

57. forty thousand dollars (\$40,000) to plan, design and construct powerlines for the Tohatchi chapter of the Navajo Nation in McKinley county;

58. fifty thousand dollars (\$50,000) to plan and construct an addition to the Shiprock chapter house of the Navajo Nation in San Juan county;

59. thirty thousand dollars (\$30,000) for a parking lot for the boys' and girls' club at the Shiprock chapter of the Navajo Nation in San Juan county;

60. forty thousand dollars (\$40,000) for phase 2 design, construction, renovation and upgrade of the facilities and site at the Navajo preparatory school in San Juan county;

61. twenty-five thousand dollars (\$25,000) to renovate and landscape Veterans park at the Nenahnezad chapter of the Navajo Nation in San Juan county;

62. one hundred thousand dollars (\$100,000) to continue powerline extensions within San Juan chapter west and the San Juan vicinity in San Juan county;

63. fifty thousand dollars (\$50,000) to plan and design a farm irrigation system at the Gadii'ahi chapter of the Navajo Nation in San Juan county;

64. twenty-five thousand dollars (\$25,000) to construct an addition to the Zuni dialysis center, equip the center and renovate the older buildings of the center in McKinley county;

65. fifteen thousand dollars (\$15,000) to plan, design and construct a helicopter pad in the Nageezi chapter of the Navajo Nation in San Juan county;

66. fifty thousand dollars (\$50,000) for renovation of the Standing Rock chapter house of the Navajo Nation in McKinley county;

67. ten thousand dollars (\$10,000) to plan, design and construct a lifelong learning center at the institute of American Indian arts in Santa Fe county;

68. fifty thousand dollars (\$50,000) to plan, design and construct a police substation in the Rock Springs chapter of the Navajo Nation in McKinley county;

69. fifteen thousand dollars (\$15,000) to purchase and install fencing around the Sanostee chapter of the Navajo Nation in San Juan county;

70. thirty-five thousand dollars (\$35,000) for the paving of the parking lot at the Chichiltah chapter house of the Navajo Nation in McKinley county;

71. twenty-five thousand dollars (\$25,000) to install electrical systems for the Ramah chapter of the Navajo Nation in Cibola county;

72. thirty-five thousand dollars (\$35,000) to improve and expand a wastewater lagoon for the Ramah chapter of the Navajo Nation in Cibola county;

73. twenty-five thousand dollars (\$25,000) to construct an addition to the Zuni dialysis center, equip the center and renovate the older buildings of the center in McKinley county;

74. one hundred thousand dollars (\$100,000) to construct phase 4 of the Pueblo of Pojoaque wellness and recreation center in Santa Fe county;

75. one hundred thousand dollars (\$100,000) to improve, construct and equip the Pueblo of Pojoaque Poeh cultural center and museum in Santa Fe county;

76. twenty-five thousand dollars (\$25,000) to purchase a van for the head start program at the Pueblo of Santa Ana in Sandoval county;

77. twenty-five thousand dollars (\$25,000) for the final phase of construction for the multipurpose head start child care facility at the Pueblo of Santa Ana in Sandoval county;

78. fifty thousand dollars (\$50,000) to construct a building for the institute of American Indian arts in Santa Fe county;

79. fifteen thousand dollars (\$15,000) to demolish the gymnasium at Navajo preparatory school in Farmington in San Juan county;

80. ten thousand dollars (\$10,000) to plan, design and construct a lifelong learning center at the institute of American Indian arts in Santa Fe county;

81. fifty thousand dollars (\$50,000) to design and construct a hydrant and gate valve system for the water system at the Pueblo of Cochiti in Sandoval county;

82. fifty thousand dollars (\$50,000) to plan, design, renovate and equip a modular building for the interagency law enforcement center at the Pueblo of Jemez in Sandoval county;

83. fifteen thousand dollars (\$15,000) for phase 2 design, construction, renovation and upgrade of the facilities and site at the Navajo preparatory school in San Juan county;

84. one hundred thousand dollars (\$100,000) for a powerline project in the White Rock chapter of the Navajo Nation in San Juan county;

85. thirty thousand dollars (\$30,000) for a health care facility at the To'hajiilee chapter of the Navajo Nation in Bernalillo county;

86. seventy-five thousand dollars (\$75,000) for the construction of drainage, lighting and health and safety amenities for the Santa Ana business center for the Pueblo of Santa Ana in Sandoval county; and

87. one hundred sixty-five thousand dollars (\$165,000) for archaeological clearances, environmental assessments, rights of way and planning, designing and constructing water systems in the Whitehorse Lake chapter of the Navajo Nation in McKinley county.

Section 22. LOCAL GOVERNMENT PROJECTS--LOCAL GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the local government division of the department of finance and administration that the need exists for the issuance of the bonds, the following amounts are appropriated to the local government division for the following purposes:

1. one thousand dollars (\$1,000) to repair hiking trail signs and shelters in Corrales in Bernalillo and Sandoval counties;
2. five thousand dollars (\$5,000) for improvements to Piedras Marcadas 2 park in Albuquerque in Bernalillo county;
3. five thousand dollars (\$5,000) to plan, design, construct, equip and furnish phase 2 development of Tuscany park in Albuquerque in Bernalillo county;
4. nine thousand dollars (\$9,000) for continued construction of Albuquerque fire department station 21 in Albuquerque in Bernalillo county;
5. twenty thousand dollars (\$20,000) to purchase automated external defibrillators for the Bernalillo county sheriff's department;
6. two thousand dollars (\$2,000) to construct the Taylor Ranch community center in Albuquerque in Bernalillo county;
7. twelve thousand five hundred dollars (\$12,500) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;
8. twelve thousand eight hundred dollars (\$12,800) for landscaping, equipment and outdoor furniture for Paradise Hills little league facilities in Albuquerque in Bernalillo county;
9. thirty-two thousand dollars (\$32,000) to make fencing improvements for the Paradise Hills little league in Albuquerque in Bernalillo county;
10. nineteen thousand six hundred dollars (\$19,600) to plan, design and construct walkways to Paradise Hills little league fields in Albuquerque in Bernalillo county;
11. fifty-eight thousand dollars (\$58,000) to replace the floor of the Paradise Hills community center gymnasium in Albuquerque in Bernalillo county;
12. thirty-five thousand dollars (\$35,000) to plan, design and construct various median landscaping improvements in city council district 8 in Albuquerque in Bernalillo county;
13. twenty-five thousand dollars (\$25,000) to purchase a van for the Holiday Park community center in Albuquerque in Bernalillo county;
14. two thousand dollars (\$2,000) for construction of a vehicle bridge at the Balloon Fiesta park in Albuquerque in Bernalillo county;

15. fifty thousand dollars (\$50,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;
16. fifty thousand dollars (\$50,000) to improve and renovate the Hiland theater in Albuquerque in Bernalillo county;
17. fifteen thousand dollars (\$15,000) to improve, landscape and provide computers, equipment and furniture at the Juan Tabo library in Albuquerque in Bernalillo county;
18. ten thousand dollars (\$10,000) to improve, renovate and provide computers, equipment and furniture at the Wyoming library in Albuquerque in Bernalillo county;
19. twenty-five thousand dollars (\$25,000) to furnish and equip the Frances Parrish library in the Albuquerque and Bernalillo county library system;
20. fifty thousand dollars (\$50,000) for repair and construction of sidewalks in the Clayton Heights and Lomas del Cielo neighborhoods in Albuquerque in Bernalillo county;
21. fifteen thousand dollars (\$15,000) for reforestation, irrigation and landscaping in the University Heights neighborhood in Albuquerque in Bernalillo county;
22. twenty-five thousand dollars (\$25,000) for the renovation of the Hiland theater in Albuquerque in Bernalillo county;
23. ten thousand dollars (\$10,000) to renovate a facility for at-risk youth at 1710 Centro Familiar SW in Bernalillo county;
24. twenty-five thousand dollars (\$25,000) to plan, design and construct the Barelmas memorial plaza in the community of Barelmas in Albuquerque in Bernalillo county;
25. one hundred fifty thousand dollars (\$150,000) to develop the site for, plan, design, construct and equip phase 1 of a multipurpose family service center in the south valley of Bernalillo county;
26. one hundred eighty-five thousand dollars (\$185,000) to acquire a tractor-trailer unit for the east mountain transfer station in Bernalillo county;
27. seventy-five thousand dollars (\$75,000) to plan and construct Manzano Mesa park in Albuquerque in Bernalillo county;

28. seventy-five thousand dollars (\$75,000) to plan and construct Singing Arrow park in Albuquerque in Bernalillo county;

29. fifty thousand dollars (\$50,000) to acquire land for facility expansion and site improvements at the Los Vecinos community center in Bernalillo county;

30. twenty-five thousand dollars (\$25,000) for improvements to the East Mountain library in Bernalillo county;

31. twenty-five thousand dollars (\$25,000) for improvements to the Lomas-Tramway library in Albuquerque in Bernalillo county;

32. twenty thousand dollars (\$20,000) to design and construct a trail between Ben Greiner soccer field and Big Sky hang glider park in Albuquerque in Bernalillo county;

33. twenty thousand dollars (\$20,000) to design and construct a tennis court and parking area at Oakland avenue northeast and Browning avenue northeast in Albuquerque in Bernalillo county;

34. twenty-five thousand dollars (\$25,000) for equipment and improvements at the Roadrunner little league fields in Albuquerque in Bernalillo county;

35. twenty-five thousand dollars (\$25,000) for phase 1 construction and renovation of the Albuquerque museum in Albuquerque in Bernalillo county;

36. thirty thousand dollars (\$30,000) to plan, design and construct a building for the business incubator program in southeast Albuquerque in Bernalillo county;

37. one hundred thousand dollars (\$100,000) to expand the infrastructure of the Arbolera de Vida development in Albuquerque in Bernalillo county;

38. ninety thousand dollars (\$90,000) to design, construct and furnish the renovation of Tiguex park in Albuquerque in Bernalillo county;

39. twenty-five thousand dollars (\$25,000) to renovate and repair the special collections branch of the Albuquerque public library in Albuquerque in Bernalillo county;

40. thirty-five thousand dollars (\$35,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

41. forty-five thousand dollars (\$45,000) for equipment for the police athletic league in Albuquerque in Bernalillo county;

42. forty thousand dollars (\$40,000) for crime prevention through environmental design for building projects in Albuquerque in Bernalillo county;
43. one hundred thousand dollars (\$100,000) to plan, design and construct improvements at the Casa Grande linear park in Albuquerque in Bernalillo county;
44. five thousand dollars (\$5,000) for construction of a vehicle bridge at the Balloon Fiesta park in Albuquerque in Bernalillo county;
45. fifteen thousand dollars (\$15,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;
46. twenty thousand dollars (\$20,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;
47. thirty-five thousand dollars (\$35,000) to renovate the Amistad crisis shelter in Bernalillo county;
48. thirty thousand dollars (\$30,000) for the renovation of the Hiland theater in Albuquerque in Bernalillo county;
49. ten thousand dollars (\$10,000) to design, construct and equip an information technology system for Albuquerque and Bernalillo county libraries;
50. sixty-one thousand dollars (\$61,000) to plan, design, construct and equip the Comanche South neighborhood park in Albuquerque in Bernalillo county;
51. seven thousand five hundred dollars (\$7,500) for the design, development, fabrication, construction, purchase and installation of exhibits, furniture, fixtures and equipment at the Explora science center and children's museum in Albuquerque in Bernalillo county;
52. twenty-two thousand dollars (\$22,000) for grading, soil stabilization, sidewalks, parking lots and other infrastructure design and installation at the National Atomic museum in Albuquerque in Bernalillo county;
53. seventeen thousand dollars (\$17,000) to plan, design, construct, purchase and install exhibits and infrastructure at the Abruzzo international balloon museum in Albuquerque in Bernalillo county;
54. five thousand dollars (\$5,000) for the renovation of the Hiland theater in Albuquerque in Bernalillo county;

55. twenty thousand dollars (\$20,000) to renovate, upgrade and equip Pat Hurley park in Albuquerque in Bernalillo county;

56. ten thousand dollars (\$10,000) to purchase and install office equipment and information technology at Taylor Ranch library in Albuquerque in Bernalillo county;

57. thirty thousand dollars (\$30,000) to purchase office and field maintenance equipment at West Mesa little league park in Albuquerque in Bernalillo county;

58. seventy thousand dollars (\$70,000) to plan, design and construct a basketball court in Rinconada Point park in Albuquerque in Bernalillo county;

59. one hundred fifty thousand dollars (\$150,000) to construct and equip the Los Padillas swimming pool facility in Bernalillo county;

60. twenty-five thousand dollars (\$25,000) to renovate the Amistad crisis shelter in Bernalillo county;

61. fifteen thousand dollars (\$15,000) to purchase and install extractor system equipment at fire station 17 in Albuquerque in Bernalillo county;

62. ten thousand dollars (\$10,000) for improvements for West Mesa little league in Albuquerque in Bernalillo county;

63. fifteen thousand dollars (\$15,000) for improvements to Candelaria village center in Albuquerque in Bernalillo county;

64. forty thousand dollars (\$40,000) to plan and design a skateboard park in house district 17 in Albuquerque in Bernalillo county;

65. two hundred ten thousand dollars (\$210,000) for improvements for Westgate little league in Albuquerque in Bernalillo county;

66. seventy-five thousand dollars (\$75,000) to renovate a facility for at-risk youth at 1710 Centro Familiar SW in Bernalillo county;

67. fifty thousand dollars (\$50,000) for repair and replacement of the roof at the Hiland theater in Bernalillo county;

68. forty thousand dollars (\$40,000) for renovation and landscaping of the median on Ridgecrest drive between Burton avenue and Kathryn avenue SE in Albuquerque in Bernalillo county;

69. twenty thousand dollars (\$20,000) for the development of a small business incubator in southeast Albuquerque in Bernalillo county;
70. twenty thousand dollars (\$20,000) to purchase and install playground equipment for the Vista Verde park in Albuquerque in Bernalillo county;
71. fifty thousand dollars (\$50,000) for the renovation of the Hiland theater in Albuquerque in Bernalillo county;
72. fifteen thousand dollars (\$15,000) to furnish, equip and make improvements to the Lomas-Tramway branch of the Albuquerque and Bernalillo county library system;
73. ten thousand dollars (\$10,000) to furnish, equip and make improvements to the Wyoming branch of the Albuquerque and Bernalillo county library system;
74. fifty thousand dollars (\$50,000) to construct a roof and upgrade the utilities at the Hubbell house in the south valley of Bernalillo county;
75. five thousand dollars (\$5,000) for the design, development, fabrication, construction, purchase and installation of exhibits, furniture, fixtures and equipment at the Explora science center and children's museum in Albuquerque in Bernalillo county;
76. twenty thousand dollars (\$20,000) for the renovation of the Hiland theater in Albuquerque in Bernalillo county;
77. twenty-five thousand dollars (\$25,000) for equipment and improvements at the Roadrunner little league fields in Albuquerque in Bernalillo county;
78. forty-five thousand dollars (\$45,000) to plan, design and construct median landscaping improvements in city council district 8 in Albuquerque in Bernalillo county;
79. ten thousand dollars (\$10,000) for equipment, furnishings and other improvements at the Juan Tabo library in Albuquerque in Bernalillo county;
80. ten thousand dollars (\$10,000) for equipment, furnishings and other improvements to the Cherry Hills library in Albuquerque in Bernalillo county;
81. twenty thousand dollars (\$20,000) for automated external defibrillators for the sheriff's department in Bernalillo county;
82. ten thousand dollars (\$10,000) for phase 1 construction and renovation of the Albuquerque museum in Albuquerque in Bernalillo county;

83. ten thousand dollars (\$10,000) to plan and design for ground development and infrastructure to prepare for construction of the southwest velodrome in Albuquerque in Bernalillo county;

84. twenty thousand dollars (\$20,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

85. ten thousand dollars (\$10,000) for construction of a vehicle bridge at the Balloon Fiesta park in Albuquerque in Bernalillo county;

86. fifty thousand dollars (\$50,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

87. twenty thousand dollars (\$20,000) to purchase and install furniture and equipment at the Taylor Ranch community center in Albuquerque in Bernalillo county;

88. twenty thousand dollars (\$20,000) for continued construction of Albuquerque fire department station 21 in Albuquerque in Bernalillo county;

89. twenty thousand dollars (\$20,000) to purchase and install equipment and information technology and to repair the roof at Taylor Ranch library in Albuquerque in Bernalillo county;

90. five thousand dollars (\$5,000) to purchase and install signage for the Riverfronte Estates neighborhood association in Albuquerque in Bernalillo county;

91. five thousand dollars (\$5,000) to purchase and install signage for the Paradise Hills civic association in Albuquerque in Bernalillo county;

92. five thousand dollars (\$5,000) to purchase and install signage for the Rancho Sereno neighborhood association in Albuquerque in Bernalillo county;

93. five thousand dollars (\$5,000) to purchase and install signage for the Piedras Marcadas neighborhood association in Albuquerque in Bernalillo county;

94. five thousand dollars (\$5,000) to purchase and install signage for Las Terrazas neighborhood association in Albuquerque in Bernalillo county;

95. five thousand dollars (\$5,000) to purchase and install signage for the Taylor Ranch neighborhood association in Albuquerque in Bernalillo county;

96. ten thousand dollars (\$10,000) to purchase land for the Paradise Hills soccer and little league facilities in Bernalillo county;

97. two thousand dollars (\$2,000) for phase 1 construction and renovation of the Albuquerque museum in Albuquerque in Bernalillo county;

98. two thousand dollars (\$2,000) for exhibits, furniture, fixtures and equipment at the Explora science center and children's museum in Albuquerque in Bernalillo county;

99. ten thousand dollars (\$10,000) for site improvements, including erosion control, bleachers, picnic tables, shade structures and walkways, for the Paradise Hills little league in Albuquerque in Bernalillo county;

100. one hundred thousand dollars (\$100,000) to design, construct and equip the Alameda little league fields at Alameda business park in Albuquerque in Bernalillo county;

101. fifty thousand dollars (\$50,000) for renovations and equipment for the Petroglyph little league in Albuquerque in Bernalillo county;

102. thirty-five thousand dollars (\$35,000) to purchase and install utility service equipment for Reserve in Catron county;

103. twenty-five thousand dollars (\$25,000) to plan, design and construct a county fair building in Catron county;

104. ten thousand dollars (\$10,000) to purchase equipment for the Roswell youth football league in Chaves county;

105. twenty-five thousand dollars (\$25,000) to purchase equipment for the Roswell police department in Chaves county;

106. twenty-five thousand dollars (\$25,000) to construct, improve, equip and furnish phases 2 and 3 at the southeast New Mexico historical center's archives building in Roswell in Chaves county;

107. seventeen thousand dollars (\$17,000) for phase 5 improvements to the Cielo Grande recreation area soccer complex in Roswell in Chaves county;

108. ten thousand dollars (\$10,000) to design and construct a regional fire training center in Roswell in Chaves county;

109. fifteen thousand dollars (\$15,000) to equip the boys' and girls' club in Roswell in Chaves county;

110. fifteen thousand dollars (\$15,000) to plan, design and construct a monument to Blackdom township in Roswell in Chaves county;

111. twenty-five thousand dollars (\$25,000) for phase 2 construction, including engineering and architectural costs, of the central fire station in Dexter in Chaves county;

112. five thousand dollars (\$5,000) for purchasing and installing playground equipment in the parks in Dexter in Chaves county;

113. thirty-five thousand dollars (\$35,000) to continue phase 3 construction, including lighting, landscaping and fields, for the Hagerman sports complex and little league fields in Chaves county;

114. fifteen thousand dollars (\$15,000) to purchase and install playground equipment at Lake Arthur municipal park in Chaves county;

115. five thousand dollars (\$5,000) to improve and equip the playground at the working mothers day nursery in Roswell in Chaves county;

116. fifteen thousand dollars (\$15,000) to expand the parking area at Tobosa developmental services in Roswell in Chaves county;

117. eight thousand dollars (\$8,000) for improvements, furniture, fixtures and equipment for the working mothers day nursery in Roswell in Chaves county;

118. five thousand dollars (\$5,000) for the purchase of recreational equipment for the boys' and girls' club of Roswell in Chaves county;

~~[119. ten thousand dollars (\$10,000) to purchase and install playground equipment for Poe Corn Center park in Roswell in Chaves county;]~~

120. ten thousand dollars (\$10,000) to purchase and install playground equipment for Melendez park in Roswell in Chaves county;

121. fifty thousand dollars (\$50,000) for the construction and equipping of a covered picnic area for Melendez park in Roswell in Chaves county;

122. thirty thousand dollars (\$30,000) to design and construct a regional fire training center in Chaves county;

123. thirty thousand dollars (\$30,000) for phase 5 improvements to the Cielo Grande recreation area soccer complex in Roswell in Chaves county;

124. twenty thousand dollars (\$20,000) to construct, improve, equip and furnish phases 2 and 3 at the southeast New Mexico historical center's archives building in Roswell in Chaves county;

125. ten thousand dollars (\$10,000) for phase 5 improvements to the Cielo Grande recreation area soccer complex in Roswell in Chaves county;

126. fifty thousand dollars (\$50,000) to construct, improve, equip and furnish phases 2 and 3 at the southeast New Mexico historical center's archives building in Roswell in Chaves county;

127. ten thousand dollars (\$10,000) to purchase a mobile mammography unit in Roswell in Chaves county;

128. ten thousand dollars (\$10,000) for playground improvements and equipment at the working mothers day nursery in Roswell in Chaves county;

129. forty thousand dollars (\$40,000) to purchase and equip a command post crime scene vehicle for the sheriff's department in Chaves county;

130. fifty thousand dollars (\$50,000) for lighting for the Randy Willis baseball field in Roswell in Chaves county;

131. twenty-five thousand dollars (\$25,000) to purchase police vehicles for Grants in Cibola county;

132. fifteen thousand dollars (\$15,000) to replace or repair the roof on the city hall in Grants in Cibola county;

133. twenty-five thousand dollars (\$25,000) to purchase police vehicles for the Milan police department in Cibola county;

134. thirteen thousand five hundred dollars (\$13,500) to purchase a vehicle for the animal control officer in Milan in Cibola county;

135. twelve thousand five hundred dollars (\$12,500) to renovate the police department building in Milan in Cibola county;

136. fifteen thousand dollars (\$15,000) to construct a substation for the Candy Kitchen volunteer fire department in Pine Hill in Cibola county;

137. twenty-five thousand dollars (\$25,000) to remodel the Cibola county complex to comply with the requirements of the Americans with Disabilities Act of 1990;

138. twenty-five thousand dollars (\$25,000) to purchase police vehicles for Grants in Cibola county;

139. fifteen thousand dollars (\$15,000) to replace or repair the roof on the city hall in Grants in Cibola county;

140. fifteen thousand dollars (\$15,000) to plan, design and construct or acquire and renovate a food kitchen for Grants in Cibola county;

141. thirty-five thousand dollars (\$35,000) to purchase equipment for the Cibola county road department;

142. twenty-five thousand dollars (\$25,000) to equip and furnish a community center in Cebolleta in Cibola county;

143. twenty thousand dollars (\$20,000) to renovate the Cibola county court complex;

144. twelve thousand dollars (\$12,000) to purchase and install information technology for the Grants police department in Cibola county;

145. one hundred twenty-five thousand dollars (\$125,000) to repair, renovate and expand the Raton convention center in Colfax county;

146. thirty-five thousand dollars (\$35,000) for improvements to the Melrose swimming pool in Curry county;

147. one hundred thousand dollars (\$100,000) for the design, development and construction of roads and infrastructure at the Clovis industrial park in Clovis in Curry county;

148. two hundred eighty thousand dollars (\$280,000) for designing, constructing and equipping the Bob Spencer baseball field in Clovis in Curry county;

149. ten thousand dollars (\$10,000) to construct an office, a restroom and storage in the fire station in Grady in Curry county;

150. ten thousand dollars (\$10,000) to purchase a pumper truck in Texico in Curry county;

151. five thousand dollars (\$5,000) for the design and construction of an addition to the Life Saver food bank facility in Clovis in Curry county;

152. thirty thousand dollars (\$30,000) for a heating, ventilation and air conditioning system for the De Baca county courthouse;

153. fifty thousand dollars (\$50,000) for improvements to the recreational facility to meet the requirements of the Americans with Disabilities Act of 1990 in Dona Ana in Dona Ana county;

154. fifty thousand dollars (\$50,000) to purchase and install a sprinkler system for the soccer field and playground equipment at the Robledo community center in Las Cruces in Dona Ana county;

155. one hundred thousand dollars (\$100,000) to construct a memorial wall honoring Dona Ana county veterans of the second world war and the Korean war in Las Cruces in Dona Ana county;

156. sixty thousand dollars (\$60,000) for the plan, design and construction of a municipal complex in Mesilla in Dona Ana county;

157. sixty thousand dollars (\$60,000) for improvements to the park in Mesquite in Dona Ana county;

158. fifty thousand dollars (\$50,000) for the expansion of the health clinic in Chaparral in Dona Ana county;

159. ten thousand dollars (\$10,000) for phase 1 renovation of the Rio Grande theatre in Las Cruces in Dona Ana county;

160. five thousand dollars (\$5,000) to design and construct a memorial wall at Veterans' park in Las Cruces honoring Dona Ana county veterans who served during the second world war and the Korean war;

161. fifty thousand dollars (\$50,000) for the planning, designing and construction of an expansion of the judicial complex in Las Cruces in Dona Ana county;

162. fifty thousand dollars (\$50,000) for upgrading and equipment for the Las Alturas volunteer fire department substation in Las Alturas in Dona Ana county;

163. fifteen thousand dollars (\$15,000) for phase 1 renovation of the Rio Grande theatre in Las Cruces in Dona Ana county;

164. fifty thousand dollars (\$50,000) for the purchase of land for recreation in La Mesa in Dona Ana county;

165. ninety-seven thousand dollars (\$97,000) for phase 3 centralization of homeless services for the Mesilla Valley community of hope homeless shelter in Las Cruces in Dona Ana county;

166. three hundred twenty thousand dollars (\$320,000) to plan, design and prepare the site for the plaza in downtown Las Cruces in Dona Ana county;

167. twenty-five thousand dollars (\$25,000) to plan and construct the community of hope homeless shelter in Las Cruces in Dona Ana county;

168. fifty thousand dollars (\$50,000) to improve, renovate and repair the Rio Grande theatre in Las Cruces in Dona Ana county;

169. seven thousand five hundred dollars (\$7,500) to design and construct a memorial wall at Veterans' park in Las Cruces honoring Dona Ana county veterans who served during the second world war and the Korean war;

170. ten thousand dollars (\$10,000) to construct a veterans' memorial wall in Las Cruces in Dona Ana county;

171. twenty thousand dollars (\$20,000) to construct a swim-training facility as part of the new Hatch community park in Hatch in Dona Ana county;

172. thirty-five thousand dollars (\$35,000) to equip the First Step pediatrics and women's services center in Las Cruces in Dona Ana county;

173. one hundred thousand dollars (\$100,000) to construct the judicial complex in Hatch in Dona Ana county;

174. ten thousand dollars (\$10,000) to purchase land for a park in Las Cruces in Dona Ana county;

175. twenty thousand dollars (\$20,000) for the construction of the Hatch ambulance services building in Hatch in Dona Ana county;

176. twenty-five thousand dollars (\$25,000) to plan, design, construct and equip a playground park in Tortugas in Dona Ana county;

177. fifty thousand dollars (\$50,000) to purchase land for recreational purposes in San Miguel in Dona Ana county;

178. seventy-four thousand dollars (\$74,000) for land purchase, parking, surveys, fencing, toilets, trails and signage for an outdoor nature center in Dona Ana county;

179. fifty thousand dollars (\$50,000) for phase 1 renovation of the Rio Grande theatre in Las Cruces in Dona Ana county;

180. fifty thousand dollars (\$50,000) to purchase and install fixtures, furnishings and equipment for the First Step pediatrics and women's services center in Las Cruces in Dona Ana county;

181. forty thousand dollars (\$40,000) to plan and construct the community of hope homeless shelter in Las Cruces in Dona Ana county;

182. two thousand dollars (\$2,000) for improvements to the streetscape and the Canal street parking lot for the main street project in the downtown area of Carlsbad in Eddy county;

183. twenty thousand dollars (\$20,000) for the purchase and installation of a sign for the Walter Gerrells performing arts and exhibition center in Carlsbad in Eddy county;

184. ten thousand dollars (\$10,000) for landscaping improvements for the city of Carlsbad in Eddy county;

185. twelve thousand five hundred dollars (\$12,500) to design and construct a youth sports complex in Carlsbad in Eddy county;

186. twenty-five thousand dollars (\$25,000) to design and construct shelters and shade structures at San Jose plaza park in Carlsbad in Eddy county;

187. ninety thousand dollars (\$90,000) to design, construct and equip an addition to the public shooting range in Carlsbad in Eddy county;

188. twenty-five thousand dollars (\$25,000) to plan, design and construct a municipal complex in Loving in Eddy county;

189. thirty-five thousand dollars (\$35,000) to purchase a backhoe for Loving in Eddy county;

190. seventeen thousand five hundred dollars (\$17,500) to improve and repair the sheriff's posse arena in Eddy county;

191. forty-five thousand dollars (\$45,000) to design and construct a fire station for the Malaga volunteer fire department in Eddy county;

192. thirty thousand dollars (\$30,000) to design and construct a skateboard and hockey arena at the Carlsbad Riverwalk recreation center in Eddy county;

193. ten thousand dollars (\$10,000) to purchase a fire truck for Artesia in Eddy county;

194. fifteen thousand dollars (\$15,000) to plan and design an expansion and upgrade equipment at the Artesia vocational training center in Eddy county;

195. fifteen thousand dollars (\$15,000) to renovate the Eddy county horse arena restrooms and concession stand;

196. ten thousand dollars (\$10,000) to develop and expand Woodbine cemetery in Artesia in Eddy county;
197. fifteen thousand dollars (\$15,000) to renovate the Eddy county horse arena restrooms and concession stand;
198. thirty thousand dollars (\$30,000) to upgrade equipment at and expand the Artesia vocational training center in Eddy county;
199. twenty thousand dollars (\$20,000) to purchase a fire truck for Artesia in Eddy county;
200. fifteen thousand dollars (\$15,000) to design and construct phase 2 additions to the Martin Luther King recreational complex in Artesia in Eddy county;
201. forty thousand dollars (\$40,000) to design and construct phase 1 for a youth sports complex in Carlsbad in Eddy county;
202. thirty thousand dollars (\$30,000) to renovate the Carlsbad Will Merchant adult softball complex in Carlsbad in Eddy county;
203. twenty-five thousand dollars (\$25,000) for improvements to the Carlsbad cemetery in Eddy county;
204. thirty thousand dollars (\$30,000) to design and construct an animal shelter in Carlsbad in Eddy county;
205. twenty thousand dollars (\$20,000) for improvements to the plaza at San Jose park in Carlsbad in Eddy county;
206. fifteen thousand dollars (\$15,000) to design and construct restroom facilities and a concession area at the public shooting range in Carlsbad in Eddy county;
207. twenty-five thousand dollars (\$25,000) for improvements to the sheriff's posse rodeo arena in Eddy county;
208. four thousand dollars (\$4,000) for improvements to the main street streetscape construction project in Carlsbad in Eddy county;
209. ten thousand dollars (\$10,000) for the purchase and installation of a sign for the Walter Gerrells performing arts and exhibition center in Carlsbad in Eddy county;
210. ten thousand dollars (\$10,000) to plan, design and construct a community-built park in Silver City in Grant county;

211. fifty thousand dollars (\$50,000) for improvements to Memory Lane cemetery in Silver City in Grant county;

212. one hundred thousand dollars (\$100,000) to renovate the Grant county detention facility, including improvements to meet the requirements of the Americans with Disabilities Act of 1990;

213. forty-four thousand dollars (\$44,000) to rebuild the historic La Capilla in Silver City in Grant county;

214. forty-five thousand dollars (\$45,000) to purchase a vehicle to be used countywide for fire protection in Grant county;

215. ten thousand dollars (\$10,000) to construct a skate park in Penny park in Silver City in Grant county;

216. twenty thousand dollars (\$20,000) to plan, design and construct La Capilla project in Silver City in Grant county;

217. twenty thousand dollars (\$20,000) to make improvements to the Memory Lane cemetery in Silver City in Grant county;

218. eighty thousand dollars (\$80,000) to improve the infrastructure in the industrial park in Santa Clara in Grant county;

219. forty thousand dollars (\$40,000) to plan, design and construct a storage building for the Bayard maintenance department in Grant county;

220. twenty-five thousand dollars (\$25,000) for the purchase of land, planning, designing, construction, equipping and landscaping for the Hachita recreation center in Grant county;

221. thirty thousand dollars (\$30,000) to replace all electrical wiring to accommodate computers in Vaughn city hall in Guadalupe county;

222. ten thousand dollars (\$10,000) for repairs to a roof on a county building in Guadalupe county;

223. twenty-four thousand dollars (\$24,000) for the purchase of a backhoe for Guadalupe county;

224. forty thousand dollars (\$40,000) for the purchase of road equipment for Guadalupe county;

225. five thousand dollars (\$5,000) for improvements to the Harding county courthouse and community center;

[~~226. twenty-five thousand dollars (\$25,000) for renovating the fairgrounds food court in Lea county;~~]

227. fifty thousand dollars (\$50,000) for rural telecommunications infrastructure development and broadband services in Lea county;

228. seventy-five thousand dollars (\$75,000) for development and landscaping of entrance areas, Joe Harvey boulevard and a trail system in Hobbs in Lea county;

229. twenty-five thousand dollars (\$25,000) to purchase a tractor for weed control in Tatum in Lea county;

230. twenty-five thousand dollars (\$25,000) for upgrading the fire suppression system at the Nor-Lea hospital in Lovington in Lea county;

231. twenty thousand dollars (\$20,000) for rural telecommunications infrastructure development and broadband services in Lea county;

232. twenty-five thousand dollars (\$25,000) to purchase and install a fire sprinkler system throughout the hospital in the Nor-Lea special hospital district in Lovington in Lea county;

233. one hundred twenty-five thousand dollars (\$125,000) to plan and design the streetscape for the downtown area in Hobbs in Lea county;

234. one hundred sixty-five thousand dollars (\$165,000) to design and construct an aquatic center in Lovington in Lea county;

235. fifteen thousand dollars (\$15,000) to plan, design and construct a public library in Capitan in Lincoln county;

236. forty-five thousand dollars (\$45,000) for the renovation of the village hall and health clinic in Corona in Lincoln county;

237. twenty thousand dollars (\$20,000) for the construction, furnishing and equipping of the county health facility in Lincoln county;

238. twenty thousand dollars (\$20,000) for the construction, furnishing and equipping of the county health facility in Lincoln county;

239. twenty-five thousand dollars (\$25,000) for the renovation of the detention center connected to the county courthouse to convert it to office space in Lincoln county;

240. one hundred twenty-five thousand dollars (\$125,000) for the design and construction of a new fire station and regional command center for emergency response in Ruidoso in Lincoln county;

241. seventy thousand dollars (\$70,000) to plan, design, construct and equip an annex to the Lincoln county detention facility for the housing and counseling of nonviolent offenders;

242. one hundred thousand dollars (\$100,000) to purchase land for and plan, design and construct a motor vehicle department in Deming in Luna county;

243. sixty thousand dollars (\$60,000) to furnish and equip the Deming city-county community library in Luna county;

244. one hundred fifty thousand dollars (\$150,000) to purchase two modular buildings to be used as classrooms for the head start center at the Mariano Lake chapter of the Navajo Nation in McKinley county;

245. fifty-five thousand dollars (\$55,000) to plan and design an emergency shelter for survivors of domestic violence in Gallup in McKinley county;

246. seventy-five thousand dollars (\$75,000) to design and construct phase 1 of a bicycle trail along Nizhoni boulevard in McKinley county;

247. thirty-four thousand five hundred dollars (\$34,500) for a new roof on the performers' quarters and to purchase teepees for the inter-tribal Indian ceremonial association in Gallup in McKinley county;

248. fifty thousand dollars (\$50,000) for renovation and construction of the Standing Rock chapter house of the Standing Rock chapter of the Navajo Nation in McKinley county;

249. fifteen thousand dollars (\$15,000) for improvements to the soccer field in Gallup in McKinley county;

250. fifteen thousand dollars (\$15,000) for field improvements at the Tony Dorsett football league city park in Gallup in McKinley county;

251. forty thousand dollars (\$40,000) for a feasibility study for a museum network in McKinley county;

252. ten thousand dollars (\$10,000) for the relocation and expansion of the community pantry in Gallup in McKinley county;

253. thirty thousand dollars (\$30,000) to repair and renovate the Wagon Mound municipal building in Mora county;

254. twenty-five thousand dollars (\$25,000) for a public transportation feasibility study in Gallup in McKinley county and Grants in Cibola county;

255. forty-three thousand dollars (\$43,000) to construct, equip and furnish a safety facility and municipal court building in Tularosa in Otero county;

256. fifty thousand dollars (\$50,000) to purchase and install playground equipment for parks in Tularosa in Otero county;

257. eight thousand dollars (\$8,000) to construct and equip a road shop building in Otero county;

258. thirty-five thousand dollars (\$35,000) to plan, design, construct, equip and clear land for a road shop building in Otero county;

259. two hundred thousand dollars (\$200,000) to renovate, repair and make improvements at the Flickinger center for performing arts in Alamogordo in Otero county;

260. forty-five thousand dollars (\$45,000) for the purchase of land and a building by Alamogordo for the center of protective environment in Alamogordo in Otero county;

261. two hundred thousand dollars (\$200,000) to design, construct and equip a juvenile detention facility for Otero county;

262. fifty thousand dollars (\$50,000) to construct and equip a road shop building in Otero county;

263. five thousand dollars (\$5,000) to upgrade the computer system in the Arch Hurley conservancy district in Quay county;

264. fifteen thousand dollars (\$15,000) to renovate and expand Trigg hospital in Tucumcari in Quay county;

265. fifteen thousand dollars (\$15,000) to design and construct administrative offices and a magistrate court building in San Jon in Quay county;

266. twenty-five thousand dollars (\$25,000) for the family health clinic parking lot, medical equipment and office equipment in Logan in Quay county;

267. twenty-five thousand dollars (\$25,000) to purchase road equipment in Quay county;

268. forty thousand dollars (\$40,000) to renovate, repair, equip and furnish the courthouse in Quay county;

269. sixty-five thousand dollars (\$65,000) for an imaging system for the courthouse in Quay county;

270. thirty thousand dollars (\$30,000) to plan, design, construct and renovate a building for the health centers of northern New Mexico clinic and Las Cumbres learning services in Espanola in Rio Arriba county;

271. one hundred twenty-five thousand dollars (\$125,000) to improve, renovate and construct facilities for the Coyote volunteer fire department in Rio Arriba county;

272. seventy-five thousand dollars (\$75,000) to plan, design and construct an animal shelter in Chama in Rio Arriba county;

273. fifty thousand dollars (\$50,000) for the purchase and installation of equipment for phase 2 of the rural events center in Rio Arriba county;

274. one hundred thousand dollars (\$100,000) for the purchase of art and a display structure for the exhibition of art for the mission convento in Espanola in Rio Arriba county;

275. fifteen thousand dollars (\$15,000) for materials to pave the parking lot at the Chamita community center in Rio Arriba county;

276. five thousand dollars (\$5,000) to make improvements to a children's learning service facility in Espanola in Rio Arriba county;

277. ten thousand dollars (\$10,000) for landscaping and playground improvements at the Alcalde multipurpose center in Rio Arriba county;

278. twenty thousand dollars (\$20,000) to construct a new fire station for the Truchas volunteer fire department in Truchas in Rio Arriba county;

279. five thousand dollars (\$5,000) to renovate, expand and equip the playground area at Las Cumbres learning services in Rio Arriba county;

280. five thousand dollars (\$5,000) for grounds and building improvements, including lighting, landscaping and equipment to resolve water runoff, at Las Cumbres learning services in Rio Arriba county;

281. fifty thousand dollars (\$50,000) to construct an addition to La Casa de Buena Salud family health center in Portales in Roosevelt county;

282. ten thousand dollars (\$10,000) to plan, design and construct an addition to the Arch volunteer fire department building in Roosevelt county;

283. twenty thousand dollars (\$20,000) to purchase road equipment for Roosevelt county;

284. ten thousand dollars (\$10,000) for an addition to the Arch volunteer fire department in Roosevelt county;

285. sixty thousand dollars (\$60,000) to purchase road equipment in Roosevelt county;

286. fifteen thousand dollars (\$15,000) for an addition to the Roosevelt county extension office;

287. twenty thousand dollars (\$20,000) to design, construct and equip a park and recreation area in Causey in Roosevelt county;

288. one hundred thousand dollars (\$100,000) to purchase and install computers and related technology in the emergency communications center and to equip the mobile data systems for emergency vehicles in San Juan county;

289. one hundred thousand dollars (\$100,000) to install an oil and gas educational exhibit at the Gateway museum in Farmington in San Juan county;

290. fifty thousand dollars (\$50,000) to design and improve park facilities at Salmon park in Bloomfield in San Juan county;

291. five thousand dollars (\$5,000) to construct storage and living quarters for El Pueblo volunteer fire department in San Miguel county;

292. fifteen thousand dollars (\$15,000) to upgrade the archiving system for the county clerk's office in San Miguel county;

293. fifteen thousand dollars (\$15,000) to improve the San Miguel health clinic in San Miguel county;

294. five thousand dollars (\$5,000) to repair a pumper truck and to purchase a pumper and tank for the Gallinas fire and rescue department in Las Vegas in San Miguel county;

295. twelve thousand dollars (\$12,000) to improve baseball fields in Las Vegas in San Miguel county;

296. five thousand dollars (\$5,000) to plan, design and construct a drag race strip in Las Vegas in San Miguel county;

297. ten thousand dollars (\$10,000) to plan, design, construct and furnish a substation for the Cabo Lucero volunteer fire department in San Miguel county;

298. ten thousand dollars (\$10,000) for the constructing, equipping and furnishing of a municipal office and fire department complex in Pecos in San Miguel county;

299. ten thousand dollars (\$10,000) to continue improvements and landscaping at the New Mexico soccer complex in Sandoval county;

300. fifty thousand dollars (\$50,000) for phase 2 construction of a health and community services center in Rio Rancho in Sandoval county;

301. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish the health and community services building in Sandoval county;

302. thirty-five thousand dollars (\$35,000) to make improvements, including fencing, to the Rotary park softball field in Bernalillo in Sandoval county;

303. forty thousand dollars (\$40,000) to renovate the old San Ysidro fire station for use as a public safety building for a law enforcement and emergency medical command center as well as serving other governmental agencies in Sandoval county;

304. forty-two thousand dollars (\$42,000) to purchase patrol vehicles for Rio Rancho in Sandoval county;

305. fifty thousand dollars (\$50,000) for continued construction of the health and community services center in Sandoval county;

306. sixty-six thousand dollars (\$66,000) to purchase patrol vehicles for Rio Rancho in Sandoval county;

307. sixty-five thousand dollars (\$65,000) to plan, design and construct a bicycle and pedestrian path between the North Hills subdivision and Northern Meadows subdivision in Rio Rancho in Sandoval county;

308. fifty thousand dollars (\$50,000) to purchase an ambulance for Rio Rancho in Sandoval county;

309. one hundred fourteen thousand dollars (\$114,000) for continued construction of the health and community services center in Sandoval county;

310. fifty thousand dollars (\$50,000) to purchase a fire truck for La Cueva volunteer fire department in Jemez Springs in Sandoval county;

311. seventy-five thousand dollars (\$75,000) to plan, design and construct a fire substation building and site at the fish hatchery for La Cueva volunteer fire department in the Jemez Springs area in Sandoval county;

312. fifty thousand dollars (\$50,000) for renovation and repair of the old fire house, including the purchase and installation of a security system, for use by the courts in Corrales in Sandoval county;

313. twenty thousand dollars (\$20,000) for improvements and construction at the thirteenth judicial district court complex in Sandoval county;

314. ten thousand dollars (\$10,000) for construction of the health and community services center in Rio Rancho in Sandoval county;

315. five thousand dollars (\$5,000) for infrastructure and improvements, including grass and trees, at the Lovelace New Mexico soccer tournament complex in Sandoval county;

316. five thousand dollars (\$5,000) for the renovation of Cathedral park in Santa Fe in Santa Fe county;

317. thirty thousand dollars (\$30,000) to furnish, equip and make improvements to the Vista Grande public library in Eldorado in Santa Fe county;

318. fifty thousand dollars (\$50,000) to plan, design and construct phase 1 of a collaborative model teen and family services multipurpose center in Tierra Contenta in Santa Fe county;

319. fifty-five thousand dollars (\$55,000) to plan, design and construct a public safety building in Edgewood in Santa Fe county;

320. thirty-five thousand dollars (\$35,000) to purchase medical equipment, including a bone densitometer, for women's health services in Santa Fe in Santa Fe county;

321. twenty-five thousand dollars (\$25,000) to acquire land for, plan, design and construct a youth and agriculture facility, to be used for extension services and 4-H club activities, in the southern area of Santa Fe county;

322. fifteen thousand dollars (\$15,000) to purchase and install park equipment in Stanley in Santa Fe county;

323. thirty thousand dollars (\$30,000) for continued improvements, including planning, designing, constructing and equipping, at La Puebla park athletic facilities in Santa Fe county;

324. twenty-five thousand dollars (\$25,000) to acquire land for, plan, design, construct and equip a health complex in Santa Fe in Santa Fe county;

325. five thousand dollars (\$5,000) to renovate Cathedral park in Santa Fe in Santa Fe county;

326. five thousand dollars (\$5,000) to renovate Cathedral park in Santa Fe in Santa Fe county;

327. five thousand dollars (\$5,000) for the renovation of Cathedral park in Santa Fe in Santa Fe county;

328. fifty thousand dollars (\$50,000) to plan, design and construct phase 1 of a youth center in Tierra Contenta in Santa Fe county;

329. twenty thousand dollars (\$20,000) to renovate Cathedral park in Santa Fe in Santa Fe county;

330. ten thousand dollars (\$10,000) to renovate Cathedral park in Santa Fe in Santa Fe county;

331. five thousand dollars (\$5,000) to renovate Cathedral park in Santa Fe in Santa Fe county;

332. fifty thousand dollars (\$50,000) for improvements to La Cienega community center in Santa Fe county;

333. fifty thousand dollars (\$50,000) to purchase land for and plan, design, construct and equip a community park in La Cienega in Santa Fe county;

334. five thousand dollars (\$5,000) to acquire land for, plan, design, construct and equip a health complex in Santa Fe in Santa Fe county;

335. ninety-five thousand dollars (\$95,000) to renovate the city's swimming pool, including repairs and resurfacing, in Socorro in Socorro county;

336. twenty-five thousand dollars (\$25,000) to design, construct, equip and renovate Sedillo park in Socorro in Socorro county;

337. thirty-five thousand dollars (\$35,000) for an addition to the skate park facility in Socorro in Socorro county;

338. fifteen thousand dollars (\$15,000) to design, construct, remodel, equip and renovate the community center in La Joya in Socorro county;

339. twenty thousand dollars (\$20,000) to plan and design a children's residential treatment facility in Taos county;

340. fifty thousand dollars (\$50,000) to improve and construct additions to the Red River conference center in Red River in Taos county;

341. fifty thousand dollars (\$50,000) for the purchase and equipping of a sheriff's vehicle for Taos county;

342. twenty-five thousand dollars (\$25,000) for the purchase of film equipment, digital camera, sound recording equipment, lighting, editing equipment, projector and screen for Taos county;

343. twenty-five thousand dollars (\$25,000) to plan, design and construct a fire station for Talpa, Ranchos de Taos and Pot Creek in Taos county;

344. twenty-five thousand dollars (\$25,000) for the purchase, construction, repair, equipping and furnishing of community centers and infrastructure for Chamisal and Ranchitos community centers in Taos county;

345. ten thousand dollars (\$10,000) to purchase and install lights and bleachers and to construct a concession stand and storeroom for the Taos little league in Taos county;

346. thirty-five thousand dollars (\$35,000) to improve and equip, including the construction of a water well, the Amalia neighborhood association community center in Taos county;

347. twenty-five thousand dollars (\$25,000) for the construction of affordable housing and purchase of materials and equipment as part of the Taos county Youthbuild development program in Taos county;

348. thirty-five thousand dollars (\$35,000) to construct and equip a community and emergency response center in Llano Quemado in Taos county;

349. twenty-five thousand dollars (\$25,000) for city park improvements, including purchasing playground equipment, in Mountainair in Torrance county;

350. sixty thousand dollars (\$60,000) to plan, design, engineer and construct a maintenance and equipment storage building in Willard in Torrance county;

351. fifty thousand dollars (\$50,000) to design, construct, equip and furnish the medical facility in Estancia in Torrance county;

352. fifteen thousand dollars (\$15,000) to repair and improve trucks for the McIntosh fire department in Torrance county;

353. fifteen thousand dollars (\$15,000) for construction of a village hall for Encino in Torrance county;

354. twenty thousand dollars (\$20,000) to design, construct, equip and furnish the medical facility in Estancia in Torrance county;

355. twenty thousand dollars (\$20,000) for phase 4 of remodeling the Clayton civic center in Clayton in Union county;

356. twenty thousand dollars (\$20,000) for phase 2 of the remodeling of the swimming pool in Clayton in Union county;

357. twenty-five thousand dollars (\$25,000) to design and construct a building to house a new rescue vehicle in Capulin in Union county;

358. twenty-five thousand dollars (\$25,000) to design and construct an ambulance and emergency medical services station in Des Moines in Union county;

359. twenty-five thousand dollars (\$25,000) to make improvements, including parking, drainage ponds and landscaping, to the site adjacent to the village library in Los Lunas in Valencia county;

360. twenty-five thousand dollars (\$25,000) to plan, design and construct a fire and police station in Bosque Farms in Valencia county;

361. twenty-five thousand dollars (\$25,000) to construct, make improvements to, landscape and furnish the multipurpose park in Belen in Valencia county;

362. twenty-five thousand dollars (\$25,000) to plan and design a voting machine warehouse in Valencia county;

363. thirty-five thousand dollars (\$35,000) to purchase and install playground equipment and construct a basketball court for El Cerro community center in Valencia county;

364. eight thousand seven hundred dollars (\$8,700) to replace overhead doors and automatic openers for the Tome-Adelino volunteer fire department in Valencia county;

365. twenty-five thousand dollars (\$25,000) to plan, design and construct health service facilities in Valencia county;

366. fifty thousand dollars (\$50,000) to plan, design and construct a fire and police station in Bosque Farms in Valencia county;

367. fifty thousand dollars (\$50,000) to remodel the Casa Colorada school building as a community meeting center for Valencia county;

368. thirty thousand dollars (\$30,000) for improvements and construction of sidewalks and wheelchair ramps to comply with the requirements of the Americans with Disabilities Act of 1990 in the Luna Hills area of Los Lunas in Valencia county;

369. thirty-five thousand dollars (\$35,000) to construct, make improvements to, landscape and furnish the multipurpose park in Belen in Valencia county;

370. five thousand dollars (\$5,000) to purchase a fire engine for wildfires statewide;

371. twenty-five thousand dollars (\$25,000) to construct a fire station for Ruidoso in Lincoln county;

372. seventy-five thousand dollars (\$75,000) to improve, equip and landscape the Cielo Grande recreation area soccer complex in Roswell in Chaves county;

373. five thousand dollars (\$5,000) to improve and equip the playground at the working mothers' day nursery in Roswell in Chaves county;

374. fifteen thousand dollars (\$15,000) to expand the parking area at the Tobosa developmental services facility in Roswell in Chaves county;

375. five thousand dollars (\$5,000) to equip and improve the boys' and girls' club in Roswell in Chaves county;

376. fifty thousand dollars (\$50,000) to design and construct a regional fire training center in Chaves county;

377. fifty thousand dollars (\$50,000) to construct, improve, equip and furnish phases 2 and 3 at the southeast New Mexico historical center's archives building in Roswell in Chaves county;

378. sixty-five thousand dollars (\$65,000) to renovate public buildings in Corona in Lincoln county;

379. forty thousand dollars (\$40,000) to construct an addition to the public library in Capitan in Lincoln county;

380. ten thousand dollars (\$10,000) to purchase equipment for the Roswell youth football league in Roswell in Chaves county;

381. twenty-five thousand dollars (\$25,000) to design and construct a retaining wall for the La Capilla park project in Silver City in Grant county;

382. one hundred thousand dollars (\$100,000) to repair, improve and equip facilities at the Grant county fairgrounds;

383. one hundred thousand dollars (\$100,000) to construct a skate park at Penny park in Silver City in Grant county;

384. one hundred thousand dollars (\$100,000) to renovate the Grant county courthouse;

385. five thousand dollars (\$5,000) to purchase maintenance safety equipment for Santa Clara in Grant county;

386. thirty thousand dollars (\$30,000) to purchase maintenance vehicles for Santa Clara in Grant county;

387. seventy-five thousand dollars (\$75,000) for the installation of lights for the soccer field at the Ben Altamirano sports complex in Silver City in Grant county;

388. fifty thousand dollars (\$50,000) to replace the computer system for Bayard in Grant county;

389. thirty-five thousand dollars (\$35,000) to plan, design and construct a storage building for the Bayard maintenance department in Grant county;

390. fifteen thousand dollars (\$15,000) for the design, construction and purchase of a fire training simulator for the Reserve volunteer fire department in Catron county;

391. fifteen thousand dollars (\$15,000) for the purchase of a thermal imager for the Reserve volunteer fire department in Catron county;

392. one hundred thousand dollars (\$100,000) to develop a county park on Rio Bravo boulevard between Second street and the Rio Grande in Albuquerque in Bernalillo county;

393. one hundred fifty thousand dollars (\$150,000) for construction and site infrastructure improvements at Los Padillas swimming pool and multipurpose facility in Bernalillo county;

394. twenty-five thousand dollars (\$25,000) for furniture and equipment for the Francis Parrish library in Albuquerque in Bernalillo county;

395. one hundred thousand dollars (\$100,000) to design, engineer and construct a multiple classroom building to house a living machine and a biolarium at the Yaxche learning center in Taos county;

396. one hundred thousand dollars (\$100,000) for phase one of the Tijeras village center preservation and development project in Bernalillo county;

397. fifty thousand dollars (\$50,000) for the phase 2 construction of the health and service facility in Rio Rancho in Sandoval county;

398. fifty thousand dollars (\$50,000) for the purchase of playground equipment and expansion of Embudo Hills park in Albuquerque in Bernalillo county;

399. fifteen thousand dollars (\$15,000) to improve the facility and surveillance system at Singing Arrow community center in Albuquerque in Bernalillo county;

400. one hundred thousand dollars (\$100,000) for median landscaping improvements on Lomas boulevard between Nakomis drive and Tramway boulevard in Albuquerque in Bernalillo county;

401. seventy-four thousand dollars (\$74,000) for improvements to the facility, grounds and parking lot at the Lomas-Tramway library in Albuquerque in Bernalillo county;

402. twenty-five thousand dollars (\$25,000) for grading, soil stabilization, sidewalks, parking lots and other infrastructure design and installation at the national atomic museum in Albuquerque in Bernalillo county;

403. twenty-five thousand dollars (\$25,000) for planning, designing, renovating and furnishing a building for an adult community mental health program in Bernalillo county; provided that the building is owned by Bernalillo county and the county holds title to the land;

404. twenty-five thousand dollars (\$25,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

405. twenty-five thousand dollars (\$25,000) to design, construct, equip and furnish the medical facility in Estancia in Tarrant county;

406. twenty-five thousand dollars (\$25,000) for equipment and improvements at the Roadrunner little league fields in Albuquerque in Bernalillo county;

407. twenty thousand dollars (\$20,000) to purchase and install playground equipment for the Vista Verde park in Albuquerque in Bernalillo county;

408. one hundred thirty-five thousand dollars (\$135,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

409. twenty thousand dollars (\$20,000) for equipping and furnishing the municipal offices in Corona in Lincoln county;

410. twenty thousand dollars (\$20,000) to repair, renovate and equip the town hall in Carrizozo in Lincoln county;

411. fifteen thousand dollars (\$15,000) for the replacement of the heating, ventilating and air conditioning system at the health centers of northern New Mexico clinic in Wagon Mound in Mora county;

412. sixty thousand dollars (\$60,000) for the purchase and equipping of an ambulance for Fort Sumner in De Baca county;

413. forty thousand dollars (\$40,000) for repairs to the ambulance bay in Vaughn in Guadalupe county;

414. sixty thousand dollars (\$60,000) to purchase an ambulance for Mountainair in Torrance county;

415. forty thousand dollars (\$40,000) for improvements to the roof of the courthouse in Guadalupe county;

416. fifty thousand dollars (\$50,000) for the Moriarty streetscape improvements plan in Torrance county;

417. twenty-five thousand dollars (\$25,000) to purchase and equip vehicles for the sheriff's department in Torrance county;

418. thirty thousand dollars (\$30,000) to renovate and upgrade the Estancia municipal building in Estancia in Torrance county;

419. ten thousand dollars (\$10,000) for infrastructure and improvements, including grass and trees, at the Lovelace New Mexico soccer tournament complex in Sandoval county;

420. thirty-six thousand seven hundred dollars (\$36,700) to plan, design, construct and equip a concession building for the Paradise Hills little league in Albuquerque in Bernalillo county;

421. one hundred thousand dollars (\$100,000) for continued construction of the health and community services center in Sandoval county;

422. fifty thousand dollars (\$50,000) to make improvements to the Amalia community center in Taos county;

423. twenty-five thousand dollars (\$25,000) to replace the roof on the health centers of northern New Mexico clinic in Truchas in Rio Arriba county;

424. twenty-five thousand dollars (\$25,000) to plan, design and construct La Lama fire station and community center in Taos county;

425. one hundred forty-eight thousand seven hundred fifty dollars (\$148,750) to design, engineer and construct a multiple classroom building to house a living machine and a biolarium at the Yaxche learning center in Taos county;

426. one hundred thousand dollars (\$100,000) to improve and construct additions to the Red River conference center in Red River in Taos county;

427. fifty thousand dollars (\$50,000) for continued construction of the health and community services center in Sandoval county;

428. fifty thousand dollars (\$50,000) for planning, designing, renovating and furnishing a building for an adult community mental health program in Bernalillo county; provided that the building is owned by Bernalillo county and the county holds title to the land;

429. thirty-one thousand dollars (\$31,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

430. forty thousand dollars (\$40,000) to replace infield grass with artificial turf on fields for the Altamont little league in Albuquerque in Bernalillo county;

431. one hundred thousand dollars (\$100,000) to acquire land for, design and construct improvements to north Domingo Baca park and community center in Albuquerque in Bernalillo county;

432. fifty thousand dollars (\$50,000) for renovation of the restroom facilities in the town hall to comply with the requirements of the Americans with Disabilities Act of 1990 in Bernalillo in Sandoval county;

433. fifty thousand dollars (\$50,000) for phase 2 construction of the training addition to the police and emergency medical services stations in Bernalillo in Sandoval county;

434. one hundred eighty-two thousand dollars (\$182,000) to construct, equip and furnish a safety facility and municipal court building in Tularosa in Otero county;

435. fifty thousand dollars (\$50,000) to plan, design, construct, equip and clear land for a road shop building in Otero county;

436. fifty thousand dollars (\$50,000) to renovate the Red Brick building in Tularosa in Otero county;

437. one hundred fifty thousand dollars (\$150,000) for the design and construction of infrastructure projects, including water, sewer, roads, trails, acequias and sidewalks, for the Arbolera de Vida project in Albuquerque in Bernalillo county;

438. one hundred thousand dollars (\$100,000) for landscaping, median and street improvements in Los Candelarias village center at Twelfth street and Candelaria boulevard in Albuquerque in Bernalillo county;

439. fifty thousand dollars (\$50,000) for improvements to Tiguex park in Albuquerque in Bernalillo county;

440. twenty-five thousand dollars (\$25,000) for renovations and improvements to Goodrich park in Albuquerque in Bernalillo county;

441. fifty thousand dollars (\$50,000) for the construction of a parking lot at the southwest corner of Montano and Rio Grande in Albuquerque in Bernalillo county;

442. one hundred fifty thousand dollars (\$150,000) for the design and construction of various bosque reclamation projects in senate district 13 in Bernalillo county;

443. fifty thousand dollars (\$50,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

444. one hundred thousand dollars (\$100,000) for phase 1 construction and renovation of the Albuquerque museum in Albuquerque in Bernalillo county;

445. ten thousand dollars (\$10,000) to repair tennis courts in Los Ranchos de Albuquerque in Bernalillo county;

446. ten thousand dollars (\$10,000) to plan and design trails in Los Ranchos de Albuquerque in Bernalillo county;

447. five thousand dollars (\$5,000) for improvements to fields, fences and spectator stands at Petroglyph little league fields at Mariposa Basin park in Taylor Ranch in Albuquerque in Bernalillo county;

448. fifty thousand dollars (\$50,000) for an animal shelter building in Grants in Cibola county;

449. fifty thousand dollars (\$50,000) to purchase police vehicles for Grants in Cibola county;

450. one hundred thousand dollars (\$100,000) to replace or repair the roof on the city hall in Grants in Cibola county;

451. seventy-five thousand dollars (\$75,000) to purchase trucks for the Cibola county road department;

452. twenty-five thousand dollars (\$25,000) to purchase and install playground equipment at parks in Milan in Cibola county;

453. twenty-five thousand dollars (\$25,000) to remodel the police department building in Milan in Cibola county;

454. fifty-four thousand dollars (\$54,000) to purchase vans for distributing commodities to the elderly and homebound residents of Cibola and Socorro counties;

455. fifteen thousand dollars (\$15,000) to purchase and install playground equipment and construct a basketball court for El Cerro community center in Valencia county;

456. thirty-five thousand dollars (\$35,000) to improve and equip the Rio Communities substation of the Rio Grande estates fire department in Valencia county;

457. twenty-five thousand dollars (\$25,000) to plan, design and construct health service facilities in Valencia county;

458. seven thousand five hundred dollars (\$7,500) to construct a veterans' memorial wall in Las Cruces in Dona Ana county;

459. seven thousand five hundred dollars (\$7,500) to construct a boxing facility at the Dona Ana recreational facility in Dona Ana county;

460. one hundred fifteen thousand dollars (\$115,000) to improve the Dona Ana recreation facility in Dona Ana county;

461. fifty thousand dollars (\$50,000) to purchase medical equipment for the First Step center building in Las Cruces in Dona Ana county;

462. one hundred thousand dollars (\$100,000) for phase 3 construction for the facility used to provide services to the homeless in the Mesilla valley through the community of hope in Las Cruces in Dona Ana county;

463. one hundred thousand dollars (\$100,000) for site preparation, planning, designing, repairing and constructing the Las Cruces downtown revitalization project in Dona Ana county;

464. one hundred thousand dollars (\$100,000) for phase 2 revitalization of the visitor and cultural center in Dona Ana in Dona Ana county;

465. twenty-five thousand dollars (\$25,000) for the renovation of the judicial complex in Hatch in Dona Ana county;

466. fifty thousand dollars (\$50,000) for the design and restoration of the Mesquite historic district in Las Cruces in Dona Ana county;

467. twenty-five thousand dollars (\$25,000) for phase 1 renovation of the Rio Grande theatre in Las Cruces in Dona Ana county;

468. twenty-five thousand dollars (\$25,000) for renovation of the Red Brick building in Tularosa in Otero county;

469. seventy-one thousand dollars (\$71,000) to plan, design, construct, furnish, equip and landscape phase 4 of the north Domingo Baca park in Albuquerque in Bernalillo county;

470. five thousand dollars (\$5,000) to engineer and construct a concrete sidewalk on San Juan de Rio from Sabana Grande to Leon Grande in Rio Rancho in Sandoval county;

471. one hundred thousand dollars (\$100,000) to engineer and construct a concrete sidewalk on San Juan de Rio from Sabana Grande to Leon Grande in Rio Rancho in Sandoval county;

472. fifty thousand dollars (\$50,000) to plan, design, construct, purchase and install exhibits and infrastructure at the Abruzzo international balloon museum in Albuquerque in Bernalillo county;

473. five thousand dollars (\$5,000) for improvements for the farmers' market in Los Ranchos de Albuquerque in Bernalillo county;

474. one hundred thousand dollars (\$100,000) to plan, design, construct and equip speed and traffic control measures in Los Ranchos de Albuquerque in Bernalillo county;

475. fifty thousand dollars (\$50,000) for phase 2 construction of the health and community services center in Rio Rancho in Sandoval county;

476. five thousand dollars (\$5,000) for improvements at Casa San Ysidro of the Albuquerque museum in Bernalillo county;

477. ten thousand dollars (\$10,000) for a stage at the Alameda community center in Albuquerque in Bernalillo county;

478. eighty-five thousand dollars (\$85,000) for improvements to the Alameda little league baseball fields at the Mechenbier property in Albuquerque in Bernalillo county;

479. twenty-five thousand dollars (\$25,000) to construct a medical center in San Miguel in San Miguel county;

480. forty thousand dollars (\$40,000) for a one-bay fire station for the Rowe fire department in San Miguel county;

481. thirty thousand dollars (\$30,000) for a water storage well for the Rowe fire department in San Miguel county;

482. thirty-six thousand four hundred dollars (\$36,400) for purchase of a vehicle for Wagon Mound in Mora county;

483. ninety-seven thousand dollars (\$97,000) to plan, design and construct a municipal facility in Pecos in San Miguel county;

484. twenty-five thousand dollars (\$25,000) to plan, design and construct a community center in San Juan in San Miguel county;

485. ten thousand dollars (\$10,000) to plan, design and construct bus stops in San Juan in San Miguel county;

486. seven thousand dollars (\$7,000) to plan, design and construct an underground sprinkler system for the park in Cleveland in Mora county;

487. one hundred fifty thousand dollars (\$150,000) to design, engineer and construct a multiple classroom building at the Yaxche learning center in Taos county;

488. forty thousand dollars (\$40,000) for the design and construction of a fire station house for El Pueblo fire department in San Jose in San Miguel county;

489. thirty thousand dollars (\$30,000) for replacement of the roofs on a county building and the juvenile detention center in Curry county;

490. fifty thousand dollars (\$50,000) for the planning, design and construction of a new municipal building in San Jon in Quay county;

491. twenty thousand dollars (\$20,000) for upgrade of the playground equipment for Springer municipal park in Springer in Colfax county;

492. thirty-five thousand dollars (\$35,000) for improvements to the Harding county courthouse and community center;

493. fifteen thousand dollars (\$15,000) for the family health clinic parking lot, medical equipment and office equipment in Logan in Quay county;

494. seventy-five thousand dollars (\$75,000) for the design and construction of an addition to the Life Saver food bank facility in Clovis in Curry county;

495. fifty thousand dollars (\$50,000) to make improvements to the Amalia community center in Taos county;

496. one hundred seventy thousand dollars (\$170,000) for improvements to McGee park county fairgrounds in San Juan county;

497. eighty thousand dollars (\$80,000) for the planning, design and construction of entry signage for Bloomfield and Aztec in San Juan county;

498. one hundred thousand dollars (\$100,000) to purchase road equipment for Roosevelt county;

499. twenty thousand dollars (\$20,000) for fire hydrants in Melrose in Curry county;

500. twenty-five thousand dollars (\$25,000) for building expansion for the Life Saver food bank in Clovis in Curry county;

501. twenty-five thousand dollars (\$25,000) to purchase and install playground equipment in Dexter in Chaves county;

502. twenty thousand dollars (\$20,000) to develop and expand Woodbine cemetery in Artesia in Eddy county;

503. forty thousand dollars (\$40,000) to renovate the Eddy county horse arena restrooms and concession stand located in Artesia;

504. fifty thousand dollars (\$50,000) to design and construct a regional fire training center in Chaves county;

505. eighty thousand dollars (\$80,000) for phase 5 improvements to the Cielo Grande recreation area soccer complex in Roswell in Chaves county;

506. twenty-five thousand dollars (\$25,000) to purchase and install playground equipment at Lake Arthur municipal park in Chaves county;

507. twenty-five thousand dollars (\$25,000) for improvements and construction related to electrical lines, towers, radios and repeaters for the Penasco volunteer fire department in Chaves county;

508. ten thousand dollars (\$10,000) for a fallen public servants memorial in Roswell in Chaves county;

509. forty thousand dollars (\$40,000) to construct a parking lot for the Tobosa developmental services facility in Chaves county;

510. thirty thousand dollars (\$30,000) to purchase and equip a crime scene vehicle for the sheriff's department in Chaves county;

511. five thousand dollars (\$5,000) for playground improvements and equipment at the working mothers' day nursery in Roswell in Chaves county;

512. five thousand dollars (\$5,000) to furnish the boys' and girls' club in Roswell in Chaves county;

513. fifty thousand dollars (\$50,000) to purchase a mobile mammography unit in Roswell in Chaves county;

514. twenty thousand dollars (\$20,000) to acquire land and construct a parking lot for the head start program in Artesia in Eddy county;

515. ten thousand dollars (\$10,000) to construct the Blackdom memorial in Roswell in Chaves county;

516. seventy-five thousand dollars (\$75,000) for soccer fields in Artesia in Eddy county;

517. fifty thousand dollars (\$50,000) for upgrading the fire suppression system at the Nor-Lea hospital in Lovington in Lea county;

518. forty thousand dollars (\$40,000) for an outdoor museum, landscaping and replacement of the water system at the Towle rest area in Lea county;

519. twenty-five thousand dollars (\$25,000) for renovating the fairground food court in Lea county;

520. twenty-five thousand dollars (\$25,000) for an addition to the Arch volunteer fire department building in Roosevelt county;

521. fifty thousand dollars (\$50,000) to purchase medical and operational equipment for the Roosevelt county special hospital district in Roosevelt county;

522. fifty thousand dollars (\$50,000) to purchase road equipment for Roosevelt county;

523. ten thousand dollars (\$10,000) for the construction of a garage in Causey in Roosevelt county;

524. thirty thousand dollars (\$30,000) for building expansion for the Life Saver food bank in Clovis in Curry county;

525. one hundred thousand dollars (\$100,000) for improvements and repairs to the Eddy county sheriff posse arena in Eddy county;

526. one hundred thousand dollars (\$100,000) for design and construction of a youth sports complex in Carlsbad in Eddy county;

527. sixty thousand dollars (\$60,000) for construction of an animal shelter in Carlsbad in Eddy county;

528. forty-five thousand dollars (\$45,000) to renovate the kitchen of the Weed community center in Otero county;

529. one hundred twenty thousand dollars (\$120,000) to replace the roof on the Weed community center in Otero county;

530. five thousand dollars (\$5,000) for improvements to the streetscape and the Canal street parking lot for the main street project in the downtown area of Carlsbad in Eddy county;

531. fifty thousand dollars (\$50,000) for renovating the fairground food court in Lea county;

532. forty-two thousand dollars (\$42,000) to purchase patrol vehicles for Rio Rancho in Sandoval county;

533. forty-five thousand dollars (\$45,000) to purchase an ambulance for Rio Rancho in Sandoval county;

534. thirty-six thousand dollars (\$36,000) to plan, design and construct a bicycle and pedestrian path between the North Hills and Northern Meadows subdivisions in Rio Rancho in Sandoval county;

535. one hundred fifty thousand dollars (\$150,000) for phase 2 of the health and community services center in Rio Rancho in Sandoval county;

536. fifty thousand dollars (\$50,000) for phase 2 construction of the training addition to the police and emergency medical services stations in Bernalillo in Sandoval county;

537. one hundred thousand dollars (\$100,000) for renovation of the restroom facilities in the town hall to comply with the requirements of the Americans with Disabilities Act of 1990 in Bernalillo in Sandoval county;

538. two thousand five hundred dollars (\$2,500) for the purchase of equipment for the Corrales recreation center in Sandoval county;

539. three thousand five hundred dollars (\$3,500) for signage and outdoor seating at the visitor welcome center for the Corrales main street project in Sandoval county;

540. ten thousand dollars (\$10,000) for the renovation of the Hiland theater in Albuquerque in Bernalillo county;

541. three thousand four hundred dollars (\$3,400) for signage and barrier repairs for the bosque preserve in Corrales in Sandoval county;

542. seven thousand dollars (\$7,000) to purchase and install historic welcome signs on the north and south ends of Corrales road in Corrales in Bernalillo and Sandoval counties;

543. six thousand dollars (\$6,000) for improvements to the horse arena and equestrian trails in Corrales in Sandoval and Bernalillo counties;

544. ten thousand dollars (\$10,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

545. fifty thousand dollars (\$50,000) to purchase and install a sprinkler system at the Santa Catarina cemetery in Carlsbad in Eddy county;

546. five thousand dollars (\$5,000) for improvements to the streetscape for the main street project in Carlsbad in Eddy county;

547. one hundred thousand dollars (\$100,000) for design and phase 1 construction of a youth sports complex in Carlsbad in Eddy county;

548. twenty-five thousand dollars (\$25,000) for improvements to the San Jose park plaza in Carlsbad in Eddy county;

549. seventy-five thousand dollars (\$75,000) to plan, design and construct a municipal complex in Loving in Eddy county;

550. fifty thousand dollars (\$50,000) to design and construct a municipal cemetery, including architectural and engineering costs, in Eunice in Lea county;

551. forty thousand dollars (\$40,000) to construct a medical clinic, including architectural and engineering costs, in Eunice in Lea county;

552. twenty thousand dollars (\$20,000) for the demolition and removal of condemned buildings, including planning and design and the removal of hazardous materials, in Eunice in Lea county;

553. six thousand dollars (\$6,000) to purchase a video camera system for the Jal police department in Lea county;

554. fifteen thousand dollars (\$15,000) to purchase and install a fire sprinkler system throughout the Nor-Lea hospital in Lovington in Lea county;

555. thirty thousand dollars (\$30,000) to design and construct a fire station for the Malaga volunteer fire department in Eddy county;

556. eighty thousand dollars (\$80,000) to construct a roof and upgrade the utilities at the Hubbell house in the south valley of Bernalillo county;

557. one hundred thousand dollars (\$100,000) to construct a health facility in the south valley in Bernalillo county;

558. five thousand dollars (\$5,000) to purchase equipment for the Jemez Springs volunteer fire department in Sandoval county;

559. twelve thousand dollars (\$12,000) to construct additions to the Jemez Springs volunteer fire department building in Sandoval county;

560. forty thousand dollars (\$40,000) to plan, design and construct a community health facility in Espanola in Rio Arriba county;

561. fifty thousand dollars (\$50,000) to plan, design and construct an animal shelter in Chama in Rio Arriba county;

562. ten thousand dollars (\$10,000) for equipment for the search and rescue team in Rio Arriba county;

563. ten thousand dollars (\$10,000) to purchase and install information technology, including digital cameras and printers, for the assessor's office in Rio Arriba county;

564. fifty thousand dollars (\$50,000) to plan, design, construct, furnish, equip and develop the site for El Rito community center in Rio Arriba county;

565. fifty thousand dollars (\$50,000) to construct an animal show barn for the fair facility at the rural events center in Abiquiu in Rio Arriba county;

566. twenty thousand dollars (\$20,000) to equip Espanola valley little league in Rio Arriba county;

567. forty-five thousand dollars (\$45,000) for phase 2 of the Alcalde fire station construction project in Rio Arriba county;

568. fifteen thousand dollars (\$15,000) for grounds and building improvements, including lighting, landscaping and equipment to resolve water runoff, at Las Cumbres learning services building in Rio Arriba county;

569. five thousand dollars (\$5,000) for phase 2 of the reforestation, irrigation and landscaping project in the Silver Hill historic district in Albuquerque in Bernalillo county;

570. one hundred seventy-five thousand dollars (\$175,000) for the renovation of the Hiland theater in Albuquerque in Bernalillo county;

571. five thousand dollars (\$5,000) to acquire land for, plan, design, construct and equip a fire station to serve the Gibson corridor in Albuquerque in Bernalillo county;

572. five thousand dollars (\$5,000) to design, construct and equip the renovation of the Highland pool facility in Albuquerque in Bernalillo county;

573. five thousand dollars (\$5,000) to design and construct landscaping improvements at the interstate 40 and Louisiana boulevard interchange in Albuquerque in Bernalillo county;

574. five thousand dollars (\$5,000) for the development of a small business incubator in southeast Albuquerque in Bernalillo county;

575. twenty thousand dollars (\$20,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

576. forty thousand dollars (\$40,000) to purchase equipment for the youth activity center in Anthony in Dona Ana county;

577. forty thousand dollars (\$40,000) for improvements to the city park in Mesquite in Dona Ana county;

578. eighteen thousand dollars (\$18,000) for the purchase of books and furniture for the Anthony valley library in Dona Ana county;

579. fifty thousand dollars (\$50,000) for the construction of an administration building for La Union domestic water association in Dona Ana county;

580. twenty thousand dollars (\$20,000) for improvements to the community center in Del Cerro in Dona Ana county;

581. one hundred thousand dollars (\$100,000) for phase 1 construction of a public service complex for the Anthony water and sanitation district in Dona Ana county;

582. fifty thousand dollars (\$50,000) for improvements to Redmender park in Sunland Park in Dona Ana county;

583. five thousand dollars (\$5,000) for phase 1 renovation of the Rio Grande theatre in Las Cruces in Dona Ana county;

584. one hundred thousand dollars (\$100,000) for site preparation, planning, designing, repairing and constructing the Las Cruces downtown revitalization project in Dona Ana county;

585. thirty thousand dollars (\$30,000) to expand the district court complex in Dona Ana county;

586. twenty-five thousand dollars (\$25,000) for improvements to the city park in Mesquite in Dona Ana county;

587. twenty-five thousand dollars (\$25,000) for the community of hope homeless facility in Las Cruces in Dona Ana county;

588. one hundred thirty-four thousand dollars (\$134,000) to plan, design and construct La Mesa community complex in La Mesa in Dona Ana county;

589. twenty-five thousand dollars (\$25,000) to improve the Del Cerro community center in Dona Ana county;

590. twenty-five thousand dollars (\$25,000) to renovate the old Hiland theater in Albuquerque in Bernalillo county;

591. ten thousand dollars (\$10,000) for construction of a vehicle bridge at the Balloon Fiesta park in Albuquerque in Bernalillo county;

592. seventy-five thousand dollars (\$75,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

593. fifty thousand dollars (\$50,000) to construct a fire and safety training tower building in McKinley county;

594. twenty-five thousand dollars (\$25,000) to plan and design a shelter facility in McKinley county;

595. fifty thousand dollars (\$50,000) to purchase and equip vehicles for the McKinley county sheriff's office;

596. twenty-five thousand dollars (\$25,000) to replace the heating, ventilation and air conditioning system for the municipal building in Gallup in McKinley county;

597. one thousand dollars (\$1,000) to improve and construct teepees at Red Rock state park in McKinley county;

598. twenty-four thousand dollars (\$24,000) to improve or repair the roof of the performance round house at Red Rock state park in McKinley county;

599. fifteen thousand dollars (\$15,000) for restroom improvements at the baseball fields in Gallup in McKinley county;

600. twenty-five thousand dollars (\$25,000) to purchase medical equipment for the First Step center for women's health and pediatrics in Las Cruces in Dona Ana county;

601. ten thousand dollars (\$10,000) to purchase and install a computer system in the county offices in Sierra county;

602. seventy thousand dollars (\$70,000) to design and construct an addition to Las Alturas fire station in Dona Ana county;

603. fifty thousand dollars (\$50,000) for improvements to East Mesa park in Dona Ana county;

604. forty thousand dollars (\$40,000) to furnish and equip the Mesa Verde community center in Albuquerque in Bernalillo county;

605. ninety thousand dollars (\$90,000) for a concession stand and improvements to Caja del Rio road and infrastructure at the Santa Fe recreational fields in Santa Fe county;

606. thirty thousand dollars (\$30,000) for infrastructure and improvements, including lighting, at the New Mexico soccer tournament complex in Sandoval county;

607. forty thousand dollars (\$40,000) for athletic equipment and furnishings at Cesar Chavez community center in Albuquerque in Bernalillo county;

608. twenty thousand dollars (\$20,000) for playing field and concession stand improvements at the Zia little league fields in Albuquerque in Bernalillo county;

609. twenty thousand dollars (\$20,000) to plan, design and construct a storage and concession building and to purchase and install lighting to two fields at the Mile High baseball and softball complex in Albuquerque in Bernalillo county;

610. forty thousand dollars (\$40,000) to design and construct the maintenance yard and caretaker's quarters and improve the visitors' center and memorial garden at Phil Chacon park and veterans' memorial park in Albuquerque in Bernalillo county;

611. forty thousand dollars (\$40,000) for the Albuquerque crime prevention through environmental design program in the La Mesa and Trumbull communities in Albuquerque in Bernalillo county;

612. forty thousand dollars (\$40,000) for building purchase or renovation and equipment for the Channel 27 and Quote Unquote organizations in Albuquerque in Bernalillo county;

613. forty thousand dollars (\$40,000) to acquire land and to make improvements to secure a fifty-foot protective corridor for the Camino Real river trail in Santa Fe county;

614. twenty-five thousand dollars (\$25,000) to design, construct and equip a branch library in the south area of Santa Fe in Santa Fe county;

615. ten thousand dollars (\$10,000) to renovate the interior of the juvenile detention facility in Santa Fe county;

616. ten thousand dollars (\$10,000) to plan, design and construct a facility for the big brother and big sister program in Santa Fe county;

617. twenty-five thousand dollars (\$25,000) to plan, design and construct the Agua Fria community center in Santa Fe county;

618. forty thousand dollars (\$40,000) to plan, design and construct phase 1 of a collaborative model teen and family services multipurpose center in Tierra Contenta in Santa Fe county;

619. ninety thousand dollars (\$90,000) to plan, design and construct a building to house agency offices for the middle Rio Grande council of governments in Albuquerque in Bernalillo county;

620. twenty thousand dollars (\$20,000) to design, construct and install improvements to the security system for the Barelás community center in Albuquerque in Bernalillo county;

621. ten thousand dollars (\$10,000) for reforestation and landscaping in the University Heights neighborhood in Albuquerque in Bernalillo county;

622. fifty thousand dollars (\$50,000) to construct and renovate Martineztown park and walkway in Albuquerque in Bernalillo county;

623. ten thousand one hundred eighty-five dollars (\$10,185) to repair and improve baseball fields for the West Mesa little league in Albuquerque in Bernalillo county;

624. forty thousand dollars (\$40,000) to renovate the facility occupied by Youth Development, incorporated, in Albuquerque in Bernalillo county;

625. seven hundred dollars (\$700) to purchase a sign for the Pat Hurley community center in Albuquerque in Bernalillo county;

626. six hundred fifty dollars (\$650) to renovate the patio area of the Pat Hurley community center in Albuquerque in Bernalillo county;

627. three thousand dollars (\$3,000) to furnish the Pat Hurley community center in Albuquerque in Bernalillo county;

628. fifty thousand six hundred fifty dollars (\$50,650) for landscape improvements for the Bataan medians in Albuquerque in Bernalillo county;

629. sixty thousand dollars (\$60,000) for phase 1 construction and development of the Atrisco little league ball fields and park in the south valley of Bernalillo county;

630. ten thousand dollars (\$10,000) to purchase office and field maintenance equipment at West Mesa little league park in Albuquerque in Bernalillo county;

631. thirty thousand dollars (\$30,000) to plan, design and construct a basketball court in Rinconada Point park in Albuquerque in Bernalillo county;

632. one hundred forty thousand dollars (\$140,000) to develop the site for, plan, design, construct and equip phase 1 of a multipurpose family service center in the south valley of Bernalillo county;

633. forty-four thousand dollars (\$44,000) for improvements for Petroglyph little league at Mariposa Basin park, including fencing, constructing spectator stands and purchasing a tractor, in Albuquerque in Bernalillo county;

634. fifty thousand dollars (\$50,000) for improvements and construction of sidewalks and wheelchair ramps to comply with the requirements of the Americans with Disabilities Act of 1990 in the Luna Hills area of Los Lunas in Valencia county;

635. one hundred thousand dollars (\$100,000) for phase 3 construction and improvements at the youth center at Daniel Fernandez park in Los Lunas in Valencia county;

636. one hundred fifty thousand dollars (\$150,000) to construct, make improvements to, landscape and furnish the multipurpose park in Belen in Valencia county;

637. twenty-five thousand dollars (\$25,000) for planning, designing and constructing a community center in the Tome-Adelino area of Valencia county;

638. fifty thousand dollars (\$50,000) to plan, design and construct a community center in Jarales in Valencia county;

639. one hundred ninety thousand dollars (\$190,000) to purchase land for and plan, design and construct a motor vehicle division office in Deming in Luna county;

640. one hundred thousand dollars (\$100,000) to plan, design and construct restrooms and shade structures at the amphitheater and open air pavilion in Deming in Luna county;

641. one hundred thousand dollars (\$100,000) to purchase an ambulance in Hidalgo county;

642. thirty thousand dollars (\$30,000) for phase 1 construction and renovation of the Albuquerque museum in Albuquerque in Bernalillo county;

643. thirty thousand dollars (\$30,000) to plan, design, construct, equip and furnish the renovation of Alvarado park in Albuquerque in Bernalillo county;

644. thirty thousand dollars (\$30,000) to design and construct landscaping improvements at the interstate 40 and Louisiana boulevard interchange in Albuquerque in Bernalillo county;

645. twenty-five thousand dollars (\$25,000) to design, construct and equip an information technology system for public access computer catalogs in Albuquerque and Bernalillo county libraries;

646. twenty-five thousand dollars (\$25,000) for the renovation of the Hiland theater in Albuquerque in Bernalillo county;

647. ten thousand dollars (\$10,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

648. forty thousand dollars (\$40,000) to improve the Veterans' memorial park in Albuquerque in Bernalillo county;

649. ten thousand dollars (\$10,000) to purchase furniture and equipment for the Wyoming branch library in Albuquerque in Bernalillo county; and

650. ten thousand dollars (\$10,000) for infrastructure design and installation at the national atomic museum in Albuquerque in Bernalillo county.

Section 23. PUBLIC SCHOOL PROJECTS--STATE DEPARTMENT OF PUBLIC EDUCATION--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the state department of public education that the need exists for the issuance of the bonds, the following amounts are appropriated to the state department of public education for the following purposes:

1. five thousand dollars (\$5,000) to purchase technological equipment for the Corrales elementary school in the Albuquerque public school district in Sandoval county;

2. twenty thousand dollars (\$20,000) to purchase educational technology for Marie M. Hughes elementary school in the Albuquerque public school district in Bernalillo county;

3. ten thousand dollars (\$10,000) to purchase educational technology for computer laboratories at Marie M. Hughes elementary school in the Albuquerque public school district in Bernalillo county;

4. forty-four thousand dollars (\$44,000) for phase 1 construction of a computer laboratory at Jimmy E. Carter middle school in the Albuquerque public school district in Bernalillo county;

5. twenty-five thousand dollars (\$25,000) to purchase equipment for Marie M. Hughes elementary school in the Albuquerque public school district in Bernalillo county;

6. eighty thousand dollars (\$80,000) to plan, design, construct and equip a rifle range for Cibola high school in the Albuquerque public school district in Bernalillo county;

7. forty thousand dollars (\$40,000) to update classroom computers, replace open laboratory computers, update software, build and equip a television production studio, purchase network laser printers and purchase projectors and smart boards as part of the technology plan at Madison middle school in the Albuquerque public school district in Bernalillo county;

8. forty thousand dollars (\$40,000) to design and install an air conditioning system for the East Mountain charter high school in the Albuquerque public school district in Bernalillo county;

9. forty-five thousand dollars (\$45,000) for technology, furniture, equipment and improvements at Sandia high school in the Albuquerque public school district in Bernalillo county;

10. one hundred thirty-two thousand dollars (\$132,000) to upgrade the athletic fields at Highland high school in the Albuquerque public school district in Bernalillo county;

11. fifty thousand dollars (\$50,000) to construct, equip and purchase or renovate a facility for the Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county;

12. thirty thousand dollars (\$30,000) for improvements and construction to the facility and site of the family focus center at Zia elementary school in the Albuquerque public school district in Bernalillo county;

13. ten thousand dollars (\$10,000) for the library computer laboratory expansion project at Rio Grande high school in the Albuquerque public school district in Bernalillo county;

14. ten thousand dollars (\$10,000) to purchase and install portable classrooms at South Valley academy in the Albuquerque public school district in Bernalillo county;

15. twenty thousand dollars (\$20,000) to purchase educational technology for Sandia high school in the Albuquerque public school district in Bernalillo county;

16. thirty thousand dollars (\$30,000) to purchase physical education equipment for Sandia high school in the Albuquerque public school district in Bernalillo county;

17. fifty thousand dollars (\$50,000) to purchase and install educational technology at Albuquerque high school in the Albuquerque public school district in Bernalillo county;

18. twenty-five thousand dollars (\$25,000) for fencing, landscaping and safety improvements to comply with the requirements of the Americans with Disabilities Act of 1990 at the baseball facility at Eldorado high school in the Albuquerque public school district in Bernalillo county;

19. fifteen thousand dollars (\$15,000) to develop and equip a mini-park at Onate elementary school in the Albuquerque public school district in Bernalillo county;

20. seventy-five thousand dollars (\$75,000) to renovate and equip the baseball facility and concession stand to meet the requirements of the Americans with Disabilities Act of 1990 at Eldorado high school in the Albuquerque public school district in Bernalillo county;

21. fifteen thousand dollars (\$15,000) for educational technology to allow for high-speed access to animation studio and virtual reality simulations at Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

22. thirty thousand dollars (\$30,000) for educational technology at Mark Twain elementary school in the Albuquerque public school district in Bernalillo county;

23. twenty-seven thousand dollars (\$27,000) to purchase and install playground equipment to support severely disabled students at Mark Twain elementary school in the Albuquerque public school district in Bernalillo county;

24. forty thousand dollars (\$40,000) for educational technology for Hayes middle school in the Albuquerque public school district in Bernalillo county;

25. eight thousand dollars (\$8,000) to purchase and install a flagpole at the Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

26. twenty-five thousand dollars (\$25,000) to construct, equip and purchase or renovate a facility for the Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county;

27. thirty thousand dollars (\$30,000) for the library at Hayes middle school in the Albuquerque public school district in Bernalillo county;

28. thirty thousand dollars (\$30,000) for educational technology for Inez elementary school in the Albuquerque public school district in Bernalillo county;

29. thirty thousand dollars (\$30,000) for the library at Inez elementary school in the Albuquerque public school district in Bernalillo county;
30. sixty thousand dollars (\$60,000) for educational technology at Van Buren middle school in the Albuquerque public school district in Bernalillo county;
31. ninety thousand three hundred dollars (\$90,300) for educational technology, network infrastructure and phone system upgrades at Montezuma elementary school in the Albuquerque public school district in Bernalillo county;
32. ten thousand dollars (\$10,000) to construct, equip and purchase or renovate a facility for the Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county;
33. fifty thousand dollars (\$50,000) for educational technology at Albuquerque high school in the Albuquerque public school district in Bernalillo county;
34. ninety-six thousand dollars (\$96,000) for improvements and construction to the facility and site of the family focus center at Zia elementary school in the Albuquerque public school district in Bernalillo county;
35. twenty thousand dollars (\$20,000) to purchase wrestling equipment for West Mesa high school in the Albuquerque public school district in Bernalillo county;
36. twenty thousand dollars (\$20,000) for educational technology at Chaparral elementary school in the Albuquerque public school district in Bernalillo county;
37. forty thousand dollars (\$40,000) for educational technology and landscaping improvements at Susie R. Marmon elementary school in the Albuquerque public school district in Bernalillo county;
38. thirty thousand dollars (\$30,000) to improve and upgrade the West Mesa high school track facility in the Albuquerque public school district in Bernalillo county;
39. forty thousand dollars (\$40,000) for educational technology and furniture at Lavaland elementary school in the Albuquerque public school district in Bernalillo county;
40. two thousand five hundred dollars (\$2,500) for improvements for the West Mesa swimming team at West Mesa high school in the Albuquerque public school district in Bernalillo county;
41. ten thousand dollars (\$10,000) for educational technology at Jimmy E. Carter middle school in the Albuquerque public school district in Bernalillo county;

42. twenty-five thousand dollars (\$25,000) for educational technology at John Adams middle school in the Albuquerque public school district in Bernalillo county;

43. twenty-five thousand dollars (\$25,000) for improvements to Los Padillas wildlife sanctuary and outdoor classroom of the Albuquerque public school district in Bernalillo county;

44. seventy-five thousand dollars (\$75,000) for equipment needed to make the transition to digital broadcasting at KANW in Albuquerque in Bernalillo county;

45. twenty-five thousand dollars (\$25,000) for educational technology at Douglas MacArthur elementary school in the Albuquerque public school district in Bernalillo county;

46. twenty-five thousand dollars (\$25,000) to reroof the west wing and cafeteria and kitchen at Los Ranchos elementary school in the Albuquerque public school district in Bernalillo county;

47. fifteen thousand dollars (\$15,000) for educational technology at Alvarado elementary school in the Albuquerque public school district in Bernalillo county;

48. twenty-five thousand dollars (\$25,000) for educational technology at Taft middle school in the Albuquerque public school district in Bernalillo county;

49. twenty-five thousand dollars (\$25,000) for educational technology at La Luz elementary school in the Albuquerque public school district in Bernalillo county;

50. ten thousand dollars (\$10,000) for educational technology at Griegos elementary school in the Albuquerque public school district in Bernalillo county;

51. fifteen thousand dollars (\$15,000) for educational technology at Garfield middle school in the Albuquerque public school district in Bernalillo county;

52. seventy-five thousand dollars (\$75,000) to design and construct a facility to house Nuestros Valores charter school in the Albuquerque public school district in Bernalillo county;

53. twenty thousand dollars (\$20,000) for the purchase of books for Highland high school in the Albuquerque public school district in Bernalillo county;

54. twenty thousand dollars (\$20,000) for the purchase of books for Kirtland elementary school in the Albuquerque public school district in Bernalillo county;

55. twenty-five thousand dollars (\$25,000) for upgrading the athletic fields at Highland high school in the Albuquerque public school district in Bernalillo county;

56. twenty thousand dollars (\$20,000) for educational technology at Emerson elementary school in the Albuquerque public school district in Bernalillo county;

57. twenty thousand dollars (\$20,000) to purchase and install playground equipment at Bandelier elementary school in the Albuquerque public school district in Bernalillo county;

58. twenty thousand dollars (\$20,000) for turf and playground equipment for Sandia elementary school in the Albuquerque public school district in Bernalillo county;

59. one hundred twenty thousand dollars (\$120,000) to purchase and install artificial turf and playground equipment for Sandia Base elementary school in the Albuquerque public school district in Bernalillo county;

60. fifty thousand dollars (\$50,000) for educational technology for Manzano high school in the Albuquerque public school district in Bernalillo county;

61. thirty thousand dollars (\$30,000) to purchase microscopes for Manzano high school in the Albuquerque public school district in Bernalillo county;

62. thirty thousand dollars (\$30,000) for a listening laboratory for Manzano high school in the Albuquerque public school district in Bernalillo county;

63. forty-eight thousand dollars (\$48,000) for educational technology for Tomasita elementary school in the Albuquerque public school district in Bernalillo county;

64. twenty-five thousand dollars (\$25,000) to fence, landscape and equip the Eldorado high school baseball facilities in the Albuquerque public school district in Bernalillo county;

65. eighty thousand dollars (\$80,000) to develop an animation studio at the Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

66. twenty thousand dollars (\$20,000) to acquire non-textbook books for the library at Eldorado high school in the Albuquerque public school district in Bernalillo county;

67. ten thousand dollars (\$10,000) to acquire non-textbook books for the library at Eisenhower middle school in the Albuquerque public school district in Bernalillo county;

68. ten thousand dollars (\$10,000) to acquire non-textbook books for the library at Georgia O'Keeffe elementary school in the Albuquerque public school district in Bernalillo county;

69. ten thousand dollars (\$10,000) to acquire non-textbook books for the library at S.Y. Jackson elementary school in the Albuquerque public school district in Bernalillo county;

70. ten thousand dollars (\$10,000) to acquire non-textbook books for the library at John Baker elementary school in the Albuquerque public school district in Bernalillo county;

71. ten thousand dollars (\$10,000) to purchase educational technology for Hubert Humphrey elementary school in the Albuquerque public school district in Bernalillo county;

72. forty thousand dollars (\$40,000) to purchase educational technology, including computers and software, cameras, scanners and a projection system, for James Monroe middle school in the Albuquerque public school district in Bernalillo county;

73. twenty thousand dollars (\$20,000) to purchase student health improvement equipment for the Cibola cluster middle schools in the Albuquerque public school district in Bernalillo county;

74. twenty-five thousand dollars (\$25,000) for educational technology to support accelerated reading and math programs at Taylor middle school in the Albuquerque public school district in Bernalillo county;

75. eighteen thousand dollars (\$18,000) to purchase equipment for the Goddard high school football team in the Roswell independent school district in Chaves county;

76. thirty thousand dollars (\$30,000) to purchase scoreboards for the gymnasiums at Goddard high school and Roswell high school in the Roswell independent school district in Chaves county;

77. twenty thousand dollars (\$20,000) to improve the Goddard high school football field in the Roswell independent school district in Chaves county;

78. twenty thousand dollars (\$20,000) for construction, including utilities, and purchasing equipment, including demonstration tables, for classrooms at Goddard high school in the Roswell independent school district in Chaves county;

79. thirty thousand dollars (\$30,000) to purchase an activity bus for the Lake Arthur municipal school district in Chaves county;

80. fifteen thousand dollars (\$15,000) to purchase and install televisions, including wall mounts and connectors, for the Dexter consolidated school district in Chaves county;

81. ten thousand dollars (\$10,000) for educational technology for kindergarten through twelfth grades and an elementary school laboratory in the Dexter consolidated school district in Chaves county;

82. five thousand dollars (\$5,000) for purchasing furniture and equipment for new high school classrooms in the Dexter consolidated school district in Chaves county;

83. ten thousand dollars (\$10,000) for educational technology for Edgewood elementary school in the Roswell independent school district in Chaves county;

84. ten thousand dollars (\$10,000) for educational technology for Nancy Lopez elementary school in the Roswell independent school district in Chaves county;

85. ten thousand dollars (\$10,000) for educational technology for Pecos elementary school in the Roswell independent school district in Chaves county;

86. ten thousand dollars (\$10,000) for educational technology for Chisum elementary school in the Roswell independent school district in Chaves county;

87. ten thousand dollars (\$10,000) for educational technology for East Grand Plains elementary school in the Roswell independent school district in Chaves county;

88. twenty thousand dollars (\$20,000) for educational technology for Mesa middle school in the Roswell independent school district in Chaves county;

89. ten thousand dollars (\$10,000) for educational technology for Mountain View middle school in the Roswell independent school district in Chaves county;

90. ten thousand dollars (\$10,000) for educational technology for the Lake Arthur municipal school district in Chaves county;

91. ten thousand dollars (\$10,000) for educational technology for Hagerman high school in the Hagerman municipal school district in Chaves county;

92. two thousand dollars (\$2,000) for the construction of the Sandy Pickens memorial in the Roswell independent school district administrative educational services center in Chaves county;

93. fifty-five thousand dollars (\$55,000) for a wireless mobile computer laboratory for Parkview elementary school in the Roswell independent school district in Chaves county;

94. two thousand dollars (\$2,000) for the Sandy Pickens memorial for the Roswell independent school district in Chaves county;

95. twenty thousand dollars (\$20,000) for a sports complex at Yucca junior high school in the Clovis municipal school district in Curry county;

96. ten thousand dollars (\$10,000) to improve and equip land and buildings for schools in the Texico municipal school district in Curry county;

97. ten thousand dollars (\$10,000) to purchase musical instruments for Highland elementary school in the Las Cruces public school district in Dona Ana county;

98. fifty thousand dollars (\$50,000) to purchase and install playground equipment at Garfield elementary school in the Hatch Valley municipal school district in Dona Ana county;

99. forty thousand dollars (\$40,000) to improve the playgrounds for the Carlsbad municipal school district elementary schools in Eddy county;

100. fifteen thousand dollars (\$15,000) to design, construct and equip restrooms and a concession facility for an activity field for the Artesia public school district in Eddy county;

101. twenty thousand dollars (\$20,000) for remodeling and equipping the field house at Lovington high school in the Lovington municipal school district in Lea county;

102. twenty-five thousand dollars (\$25,000) to purchase equipment for the Capitan high school basketball program in the Capitan municipal school district in Lincoln county;

103. twenty-six thousand dollars (\$26,000) to purchase equipment for the future farmers of America program at Carrizozo high school in the Carrizozo municipal school district in Lincoln county;

104. twelve thousand dollars (\$12,000) to purchase equipment for the Carrizozo high school athletics program in the Carrizozo municipal school district in Lincoln county;

105. fifteen thousand dollars (\$15,000) to purchase and install playground equipment for the Capitan municipal school district in Lincoln county;

106. two thousand dollars (\$2,000) to purchase equipment for the Capitan performing arts program in the Capitan municipal school district in Lincoln county;

107. two thousand dollars (\$2,000) to equip the performing arts music program in the Capitan municipal school district in Lincoln county;

108. ten thousand dollars (\$10,000) to purchase theater curtains for the Capitan performing arts program in the Capitan municipal school district in Lincoln county;

109. forty thousand dollars (\$40,000) for the construction of a multipurpose field for physical education activities for the Hondo Valley public school district in Lincoln county;

110. twenty-five thousand dollars (\$25,000) to design, construct and equip a warming kitchen at Ramah high school in the Gallup-McKinley county public school district in McKinley county;

111. twenty thousand dollars (\$20,000) to renovate the running track at Tularosa high school in the Tularosa municipal school district in Otero county;

112. seventy thousand dollars (\$70,000) for a roof replacement for the middle and elementary school in the Cloudcroft municipal school district in Otero county;

113. twenty-five thousand dollars (\$25,000) to construct and equip an addition to the Escalante high school gymnasium in the Chama Valley independent school district in Rio Arriba county;

114. ten thousand dollars (\$10,000) for the purchase and installation of the campus safety and security system for the Portales municipal school district in Portales in Roosevelt county;

115. twenty thousand dollars (\$20,000) for the purchase and installation of the campus safety and security system for the Portales municipal school district in Portales in Roosevelt county;

116. three thousand eight hundred thirty-nine dollars (\$3,839) to construct and equip an outdoor basketball court for the Bridge Academy charter high school in Las Vegas in San Miguel county;

117. ten thousand dollars (\$10,000) for the purchase of band instruments for the Las Vegas city public school district in San Miguel county;

118. ten thousand dollars (\$10,000) for the purchase of band instruments for the West Las Vegas public school district in San Miguel county;

119. seventy thousand dollars (\$70,000) for security cameras and supporting technology for all facilities in the Rio Rancho public school district in Sandoval county;

120. ten thousand dollars (\$10,000) to plan, design and construct artificial turf soccer fields for the Santa Fe public school district in Santa Fe county;

121. fifty thousand dollars (\$50,000) to drill a well and to purchase and install a water storage tank and disinfection system for the Pojoaque high school-Jacona campus in the Pojoaque Valley public school district in Santa Fe county;

122. twenty thousand dollars (\$20,000) for the replacement of the roof at Kearny elementary school in the Santa Fe public school district in Santa Fe county;

123. five thousand dollars (\$5,000) to design and develop a playground in the Des Moines municipal school district in Union county;

124. twenty-five thousand dollars (\$25,000) to design, construct, equip and install a lighting system for the baseball and softball fields at Los Lunas high school in the Los Lunas public school district in Valencia county;

125. twenty-five thousand dollars (\$25,000) to plan, design and construct a nature trail at La Promesa elementary school in the Belen consolidated school district in Valencia county;

126. fifty thousand dollars (\$50,000) for upgrading the science rooms at Goddard high school in the Roswell independent school district in Chaves county;

127. twenty-five thousand dollars (\$25,000) for field improvements, lights and a slab for the football practice field at Goddard high school in the Roswell independent school district in Chaves county;

128. fifteen thousand dollars (\$15,000) for an irrigation system for the Goddard high school baseball practice field in the Roswell independent school district in Chaves county;

129. ten thousand dollars (\$10,000) for an irrigation system for and leveling of the football practice field at Goddard high school in the Roswell independent school district in Chaves county;

130. three thousand dollars (\$3,000) to purchase educational technology, including computer equipment for the football program, for Goddard high school in the Roswell independent school district in Chaves county;

131. twelve thousand dollars (\$12,000) for a storage shed and softball equipment for the Goddard high school girls' softball program in the Roswell independent school district in Chaves county;

132. nineteen thousand dollars (\$19,000) to purchase educational technology for Central elementary school in the Artesia public school district in Eddy county;

133. thirteen thousand dollars (\$13,000) to purchase safety equipment for the Goddard high school football program in the Roswell independent school district in Chaves county;

134. five thousand dollars (\$5,000) to purchase equipment and educational technology for academic competition teams for Sierra middle school in the Roswell independent school district in Chaves county;

135. ten thousand dollars (\$10,000) to purchase equipment and educational technology for academic competition teams at Roswell high school in the Roswell independent school district in Chaves county;

136. five thousand dollars (\$5,000) to purchase equipment and educational technology for academic competition teams at Mountain View middle school in the Roswell independent school district in Chaves county;

137. five thousand dollars (\$5,000) to purchase equipment and educational technology for academic competition teams at Berrendo elementary school in the Roswell independent school district in Chaves county;

138. eighteen thousand dollars (\$18,000) to purchase equipment for the Carrizozo high school athletic program in the Carrizozo municipal school district in Lincoln county;

139. five thousand dollars (\$5,000) to purchase equipment and educational technology for academic competition teams at Carrizozo high school in the Carrizozo municipal school district in Lincoln county;

140. seventeen thousand dollars (\$17,000) to purchase equipment for the future farmers of America program at Carrizozo high school in the Carrizozo municipal school district in Lincoln county;

141. ten thousand dollars (\$10,000) to purchase educational technology for schools in the Corona public school district in Lincoln county;

142. five thousand dollars (\$5,000) to purchase equipment and educational technology for academic competition teams at Corona high school in the Corona public school district in Lincoln county;

143. fifteen thousand dollars (\$15,000) to purchase playground equipment for the Capitan municipal school district in Lincoln county;

144. five thousand dollars (\$5,000) to purchase equipment for the Capitan parent-teacher association performing arts program for the Capitan municipal school district in Lincoln county;

145. ten thousand dollars (\$10,000) to purchase theater curtains for the performing arts program in the Capitan municipal school district in Lincoln county;

146. five thousand dollars (\$5,000) to purchase equipment and educational technology for academic competition teams at Ruidoso high school in the Ruidoso municipal school district in Lincoln county;

147. five thousand dollars (\$5,000) to purchase a scoreboard for the Roswell high school gymnasium in the Roswell independent school district in Chaves county;

148. five thousand dollars (\$5,000) to purchase a scoreboard for the Goddard high school gymnasium in the Roswell independent school district in Chaves county;

149. one hundred thousand dollars (\$100,000) to equip a community recreation center and playground for the Santa Clara community at Central elementary school in the Cobre consolidated school district in Grant county;

150. twenty thousand dollars (\$20,000) for educational technology at Grant middle school in the Albuquerque public school district in Bernalillo county;

151. twenty thousand dollars (\$20,000) for educational technology at Hayes middle school in the Albuquerque public school district in Bernalillo county;

152. twenty thousand dollars (\$20,000) for educational technology at Madison middle school in the Albuquerque public school district in Bernalillo county;

153. twenty thousand dollars (\$20,000) for landscaping improvements and a canopy at Collet Park elementary school in the Albuquerque public school district in Bernalillo county;

154. twenty thousand dollars (\$20,000) for upgrading the playground and cafeteria at Bellehaven elementary school in the Albuquerque public school district in Bernalillo county;

155. twenty thousand dollars (\$20,000) for educational technology at Eubank elementary school in the Albuquerque public school district in Bernalillo county;

156. twenty thousand dollars (\$20,000) for educational technology at Inez elementary school in the Albuquerque public school district in Bernalillo county;

157. twenty thousand dollars (\$20,000) for site improvements at Mitchell elementary school in the Albuquerque public school district in Bernalillo county;

158. twenty thousand dollars (\$20,000) for educational technology at Matheson Park elementary school in the Albuquerque public school district in Bernalillo county;

159. fifty-three thousand dollars (\$53,000) for renovating the lecture hall at Sandia high school in the Albuquerque public school district in Bernalillo county;

160. twenty thousand dollars (\$20,000) for educational technology at Sombra del Monte elementary school in the Albuquerque public school district in Bernalillo county;

161. fifty-three thousand dollars (\$53,000) to construct, purchase or renovate a facility for the Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county;

162. fifty-three thousand dollars (\$53,000) for portable classrooms at South Valley academy in the Albuquerque public school district in Bernalillo county;

163. fifty-three thousand dollars (\$53,000) for educational technology improvements for Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

164. twenty-three thousand dollars (\$23,000) to purchase and install air conditioning at East Mountain high school in the Albuquerque public school district in Bernalillo county;

165. forty thousand dollars (\$40,000) to replace the roof and to construct dual language classrooms at Los Ninos elementary school in the Las Vegas city public school district in San Miguel county;

166. forty thousand dollars (\$40,000) for the purchase of band instruments for the west Las Vegas public school district in San Miguel county;

167. ten thousand dollars (\$10,000) to purchase and install a lighting control system for the Bridge Academy charter high school in the Las Vegas city public school district in San Miguel county;

168. thirteen thousand six hundred fifty dollars (\$13,650) for security cameras and supporting technology for Martin Luther King, Jr. elementary school in the Rio Rancho public school district in Sandoval county;

169. thirteen thousand six hundred fifty dollars (\$13,650) for security cameras and supporting technology for Puesta del Sol elementary school in the Rio Rancho public school district in Sandoval county;

170. forty-five thousand dollars (\$45,000) for educational technology for Lyndon B. Johnson middle school in the Albuquerque public school district in Bernalillo county;

171. forty-five thousand dollars (\$45,000) for educational technology for Petroglyph elementary school in the Albuquerque public school district in Bernalillo county;

172. forty-five thousand dollars (\$45,000) for educational technology for Chamiza elementary school in the Albuquerque public school district in Bernalillo county;

173. forty-five thousand dollars (\$45,000) for educational technology for Seven-Bar elementary school in the Albuquerque public school district in Bernalillo county;

174. seventy-six thousand dollars (\$76,000) for educational technology for Marie M. Hughes elementary school in the Albuquerque public school district in Bernalillo county;

175. forty-five thousand dollars (\$45,000) for educational technology for Sierra Vista elementary school in the Albuquerque public school district in Bernalillo county;

176. forty-five thousand dollars (\$45,000) for educational technology for James Monroe middle school in the Albuquerque public school district in Bernalillo county;

177. fifty thousand dollars (\$50,000) for educational technology for Cibola high school in the Albuquerque public school district in Bernalillo county;

178. forty-five thousand dollars (\$45,000) for educational technology at Chaparral elementary school in the Albuquerque public school district in Bernalillo county;

179. ninety thousand dollars (\$90,000) for educational technology improvements for Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

180. twenty-seven thousand five hundred dollars (\$27,500) for educational technology at La Cueva high school in the Albuquerque public school district in Bernalillo county;

181. ten thousand dollars (\$10,000) for educational technology at Sandia high school in the Albuquerque public school district in Bernalillo county;

182. ten thousand dollars (\$10,000) for educational technology at Desert Ridge middle school in the Albuquerque public school district in Bernalillo county;

183. ten thousand dollars (\$10,000) for educational technology at Eisenhower middle school in the Albuquerque public school district in Bernalillo county;

184. ten thousand dollars (\$10,000) for educational technology at Madison middle school in the Albuquerque public school district in Bernalillo county;

185. ten thousand dollars (\$10,000) for educational technology at Double Eagle elementary school in the Albuquerque public school district in Bernalillo county;

186. ten thousand dollars (\$10,000) for educational technology at Dennis Chavez elementary school in the Albuquerque public school district in Bernalillo county;

187. ten thousand dollars (\$10,000) for educational technology at Hubert H. Humphrey elementary school in the Albuquerque public school district in Bernalillo county;

188. ten thousand dollars (\$10,000) for educational technology at Georgia O'Keeffe elementary school in the Albuquerque public school district in Bernalillo county;

189. fifteen thousand dollars (\$15,000) for educational technology at Eldorado high school in the Albuquerque public school district in Bernalillo county;

190. fifteen thousand dollars (\$15,000) for educational technology at Bernalillo high school in the Bernalillo public school district in Sandoval county;

191. seventy-five thousand dollars (\$75,000) to renovate the running track at Tularosa high school in the Tularosa municipal school district in Otero county;

192. ninety-three thousand dollars (\$93,000) to replace the gymnasium floor at Chaparral middle school in the Alamogordo public school district in Otero county;

193. two thousand dollars (\$2,000) for equipment for girls' volleyball for the Hatch valley municipal school district in Dona Ana county;

194. ten thousand dollars (\$10,000) to purchase security equipment for Rio Rancho elementary school in the Rio Rancho public school district in Sandoval county;

195. ten thousand dollars (\$10,000) to purchase security equipment for Rio Rancho high school in the Rio Rancho public school district in Sandoval county;

196. ten thousand dollars (\$10,000) to purchase security equipment for Eagle Ridge middle school in the Rio Rancho public school district in Sandoval county;

197. five thousand dollars (\$5,000) to purchase security equipment for Martin Luther King, Jr. elementary school in the Rio Rancho public school district in Sandoval county;

198. five thousand dollars (\$5,000) for educational technology for Corrales elementary school in the Albuquerque public school district in Bernalillo county;

199. ten thousand dollars (\$10,000) to purchase security equipment for Lincoln middle school in the Rio Rancho public school district in Sandoval county;

200. ten thousand dollars (\$10,000) for educational technology for Cibola high school in the Albuquerque public school district in Bernalillo county;

201. ten thousand dollars (\$10,000) for educational technology at Taft middle school in the Albuquerque public school district in Bernalillo county;

202. ten thousand dollars (\$10,000) for educational technology at Los Ranchos elementary school in the Albuquerque public school district in Bernalillo county;

203. fifteen thousand dollars (\$15,000) for educational technology at Valley high school in the Albuquerque public school district in Bernalillo county;

204. six thousand dollars (\$6,000) for educational technology at Seven-Bar elementary school in the Albuquerque public school district in Bernalillo county;

205. six thousand dollars (\$6,000) for educational technology at Petroglyph elementary school in the Albuquerque public school district in Bernalillo county;

206. five thousand dollars (\$5,000) for educational technology at James Monroe middle school in the Albuquerque public school district in Bernalillo county;

207. ten thousand dollars (\$10,000) for educational technology at Alameda elementary school in the Albuquerque public school district in Bernalillo county;

208. ten thousand dollars (\$10,000) for educational technology at Alvarado elementary school in the Albuquerque public school district in Bernalillo county;

209. five thousand dollars (\$5,000) for educational technology at Mission Avenue elementary school in the Albuquerque public school district in Bernalillo county;

210. ten thousand dollars (\$10,000) for educational technology at Taylor middle school in the Albuquerque public school district in Bernalillo county;

211. ten thousand dollars (\$10,000) for educational technology at Desert Ridge middle school in the Albuquerque public school district in Bernalillo county;

212. ten thousand dollars (\$10,000) for educational technology at Edmund G. Ross elementary school in the Albuquerque public school district in Bernalillo county;

213. five thousand dollars (\$5,000) for educational technology at Dennis Chavez elementary school in the Albuquerque public school district in Bernalillo county;

214. ten thousand dollars (\$10,000) for educational technology at La Cueva high school in the Albuquerque public school district in Bernalillo county;

215. five thousand dollars (\$5,000) for educational technology at Double Eagle elementary school in the Albuquerque public school district in Bernalillo county;

216. five thousand dollars (\$5,000) for educational technology at McKinley middle school in the Albuquerque public school district in Bernalillo county;

217. five thousand dollars (\$5,000) for educational technology at Madison middle school in the Albuquerque public school district in Bernalillo county;

218. seven thousand dollars (\$7,000) for educational technology at Del Norte high school in the Albuquerque public school district in Bernalillo county;

219. twenty-five thousand dollars (\$25,000) to purchase kitchen equipment for the elementary school in the Wagon Mound public school district in Mora county;

220. ten thousand dollars (\$10,000) to make improvements and plan, design and construct tennis and basketball courts and a walking track for the Nambe head start program in the Pojoaque valley public school district in Santa Fe county;

221. fifteen thousand dollars (\$15,000) to plan, design and construct an all-weather track for the Clovis municipal school district in Curry county;

222. fifty thousand dollars (\$50,000) for educational technology for Berrendo middle school in the Roswell independent school district in Chaves county;

223. twenty-five thousand dollars (\$25,000) for the purchase and installation of the campus safety and security system for the Portales municipal school district in Roosevelt county;

224. fifty thousand dollars (\$50,000) to plan, design and construct an all-weather track for the Clovis municipal school district in Curry county;

225. forty thousand dollars (\$40,000) to purchase vehicles for the Elida municipal school district in Roosevelt county;

226. twenty-five thousand dollars (\$25,000) for the relocation of the playground and for equipment for the Hondo Valley public school district in Lincoln county;

227. twenty thousand dollars (\$20,000) to purchase educational technology and playground equipment for Chisum elementary school in the Roswell independent school district in Chaves county;

228. twenty thousand dollars (\$20,000) to purchase educational technology and playground equipment for Pecos elementary school in the Roswell independent school district in Chaves county;

229. twenty thousand dollars (\$20,000) to purchase educational technology and playground equipment for Sunset elementary school in the Roswell independent school district in Chaves county;

230. twenty thousand dollars (\$20,000) to purchase educational technology and playground equipment for Nancy Lopez elementary school in the Roswell independent school district in Chaves county;

231. twenty thousand dollars (\$20,000) for computers and playground improvements to East Grand Plains elementary school in the Roswell independent school district in Chaves county;

232. twenty thousand dollars (\$20,000) to purchase educational technology and computer equipment for the computer laboratory at Washington Avenue elementary school in the Roswell independent school district in Chaves county;

233. twenty-five thousand dollars (\$25,000) to purchase equipment and improve and construct phase 2 of the softball field project at Roswell high school in the Roswell independent school district in Chaves county;

234. fifty thousand dollars (\$50,000) to improve and equip land and buildings for schools in the Texico municipal school district in Curry county;

235. fifty thousand dollars (\$50,000) for the purchase and installation of the campus safety and security system for the Portales municipal school district in Roosevelt county;

236. one hundred thousand dollars (\$100,000) to plan, design and construct an all-weather track for the Clovis municipal school district in Curry county;

237. fifty thousand dollars (\$50,000) to improve the Lovington high school field house in the Lovington municipal school district in Lea county;

238. six thousand five hundred dollars (\$6,500) to purchase a field maintenance tractor for the Cibola high school softball program in the Albuquerque public school district in Bernalillo county;

239. two thousand four hundred fifty dollars (\$2,450) to replace turf at the softball field at Cibola high school in the Albuquerque public school district in Bernalillo county;

240. three thousand five hundred dollars (\$3,500) to purchase and repair pitching machines for the Cibola high school softball program in the Albuquerque public school district in Bernalillo county;

241. five thousand dollars (\$5,000) for educational technology at Corrales elementary school in the Albuquerque public school district in Sandoval county;

242. twenty-one thousand six hundred dollars (\$21,600) for security cameras and supporting technology for Rio Rancho high school in the Rio Rancho public school district in Sandoval county;

243. fifteen thousand six hundred dollars (\$15,600) for security cameras and supporting technology for Rio Rancho mid-high school in the Rio Rancho public school district in Sandoval county;

244. thirteen thousand six hundred fifty dollars (\$13,650) for security cameras and supporting technology for Ernest Stapleton elementary school in the Rio Rancho public school district in Sandoval county;

245. seventy-four thousand dollars (\$74,000) to purchase and install a heating, ventilation and air conditioning system at the Jal high school gymnasium and natatorium in the Jal public school district in Lea county;

246. fifteen thousand dollars (\$15,000) for educational technology and library books for Atrisco elementary school in the Albuquerque public school district in Bernalillo county;

247. twenty thousand dollars (\$20,000) for educational technology and library books for Ernie Pyle middle school in the Albuquerque public school district in Bernalillo county;

248. fifteen thousand dollars (\$15,000) for educational technology and library books for Armijo elementary school in the Albuquerque public school district in Bernalillo county;

249. twenty-five thousand dollars (\$25,000) for educational technology and library books for West Mesa high school in the Albuquerque public school district in Bernalillo county;

250. twenty thousand dollars (\$20,000) for educational technology and library books for Harrison middle school in the Albuquerque public school district in Bernalillo county;

251. fifteen thousand dollars (\$15,000) for educational technology and library books for Mary Ann Binford elementary school in the Albuquerque public school district in Bernalillo county;

252. fifteen thousand dollars (\$15,000) for educational technology and library books for Navajo elementary school in the Albuquerque public school district in Bernalillo county;

253. fifteen thousand dollars (\$15,000) for educational technology and library books for Los Padillas elementary school in the Albuquerque public school district in Bernalillo county;

254. fifteen thousand dollars (\$15,000) for educational technology and library books for Adobe Acres elementary school in the Albuquerque public school district in Bernalillo county;

255. twenty thousand dollars (\$20,000) for educational technology and library books for Polk middle school in the Albuquerque public school district in Bernalillo county;

256. twenty thousand dollars (\$20,000) for educational technology and library books for Jimmy E. Carter middle school in the Albuquerque public school district in Bernalillo county;

257. twenty-five thousand dollars (\$25,000) for educational technology and library books for Rio Grande high school in the Albuquerque public school district in Bernalillo county;

258. fifteen thousand dollars (\$15,000) for educational technology and library books for Kit Carson elementary school in the Albuquerque public school district in Bernalillo county;

259. fifteen thousand dollars (\$15,000) for educational technology and library books for Carlos Rey elementary school in the Albuquerque public school district in Bernalillo county;

260. twenty thousand dollars (\$20,000) for educational technology and library books for Truman middle school in the Albuquerque public school district in Bernalillo county;

261. fifteen thousand dollars (\$15,000) for educational technology and library books for Painted Sky elementary school in the Albuquerque public school district in Bernalillo county;

262. fifteen thousand dollars (\$15,000) for educational technology and library books for Pajarito elementary school in the Albuquerque public school district in Bernalillo county;

263. fifteen thousand dollars (\$15,000) to improve the track facility at West Mesa high school in the Albuquerque public school district in Bernalillo county;

264. twenty thousand dollars (\$20,000) for portable classrooms at South Valley academy in the Albuquerque public school district in Bernalillo county;

265. ten thousand dollars (\$10,000) to construct, purchase or renovate a facility for the Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county;

266. fifteen thousand dollars (\$15,000) to design and construct a facility for the Nuestros Valores charter school in the Albuquerque public school district in Bernalillo county;

267. fifty thousand dollars (\$50,000) for land acquisition, infrastructure and construction of affordable housing for teachers in the Santa Fe public school district in Santa Fe county;

268. twenty-five thousand dollars (\$25,000) to plan, design, construct and furnish an addition to the Escalante high school gymnasium in the Chama valley independent school district in Rio Arriba county;

269. ten thousand dollars (\$10,000) for infrastructure improvements and equipment, including roof and plumbing repairs and purchase of propane heaters, at El Rito public library, a building leased from the Mesa Vista consolidated school district, in Rio Arriba county;

270. forty thousand dollars (\$40,000) to purchase educational technology for Mark Twain elementary school in the Albuquerque public school district in Bernalillo county;

271. forty thousand dollars (\$40,000) to improve and equip the Sandia Base elementary school playground in the Albuquerque public school district in Bernalillo county;

272. forty thousand dollars (\$40,000) for educational technology at Monte Vista elementary school in the Albuquerque public school district in Bernalillo county;

273. forty thousand dollars (\$40,000) for educational technology at Montezuma elementary school in the Albuquerque public school district in Bernalillo county;

274. forty thousand dollars (\$40,000) for educational technology at Bandelier elementary school in the Albuquerque public school district in Bernalillo county;

275. forty thousand dollars (\$40,000) for educational technology at Jefferson middle school in the Albuquerque public school district in Bernalillo county;

276. forty thousand dollars (\$40,000) for educational technology at Highland high school in the Albuquerque public school district in Bernalillo county;

277. forty thousand dollars (\$40,000) for educational technology at Albuquerque high school in the Albuquerque public school district in Bernalillo county;

278. forty thousand dollars (\$40,000) to update the telephone system at Zia elementary school in the Albuquerque public school district in Bernalillo county;

279. ten thousand dollars (\$10,000) for the purchase of mariachi equipment for Gadsden high school in the Gadsden independent school district in Dona Ana county;

280. two hundred fifty thousand dollars (\$250,000) for improvements to the playgrounds at Sunland park elementary school in the Gadsden independent school district in Dona Ana county;

281. ten thousand dollars (\$10,000) for the purchase and renovation of playground equipment at Onate elementary school in the Albuquerque public school district in Bernalillo county;

282. twenty-five thousand dollars (\$25,000) for improvements to the marine junior reserve officer training corps facilities at Eldorado high school in the Albuquerque public school district in Bernalillo county;

283. one hundred five thousand dollars (\$105,000) for improvements at the Eldorado high school cluster libraries in the Albuquerque public school district in Bernalillo county;

284. two hundred thousand dollars (\$200,000) for educational technology at the Eldorado high school cluster in the Albuquerque public school district in Bernalillo county;

285. seventy-five thousand dollars (\$75,000) to purchase equipment for a laser laboratory and an engraver at the Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

286. seventy-five thousand dollars (\$75,000) to renovate and equip the baseball facility at Eldorado high school in the Albuquerque public school district in Bernalillo county;

287. eighty thousand dollars (\$80,000) to construct multi-use athletic fields at Wilson middle school in the Albuquerque public school district in Bernalillo county;

288. twenty thousand dollars (\$20,000) for educational technology at La Mesa elementary school in the Albuquerque public school district in Bernalillo county;

289. forty thousand dollars (\$40,000) for improvements and equipment for the weight rooms at Highland and Manzano high schools in the Albuquerque public school district in Bernalillo county;

290. twenty thousand dollars (\$20,000) for educational technology at Van Buren middle school in the Albuquerque public school district in Bernalillo county;

291. twenty thousand dollars (\$20,000) for educational technology at Hayes middle school in the Albuquerque public school district in Bernalillo county;

292. twenty thousand dollars (\$20,000) for educational technology at Hawthorne elementary school in the Albuquerque public school district in Bernalillo county;

293. twenty thousand dollars (\$20,000) for educational technology at Kennedy middle school in the Albuquerque public school district in Bernalillo county;

294. fifteen thousand dollars (\$15,000) for educational technology at Tomasita elementary school in the Albuquerque public school district in Bernalillo county;

295. fifteen thousand dollars (\$15,000) for educational technology at Emerson elementary school in the Albuquerque public school district in Bernalillo county;

296. fifteen thousand dollars (\$15,000) for educational technology at Wherry elementary school in the Albuquerque public school district in Bernalillo county;

297. fifteen thousand dollars (\$15,000) for educational technology at Whittier elementary school in the Albuquerque public school district in Bernalillo county;

298. two thousand five hundred dollars (\$2,500) to purchase library books for Hayes middle school in the Albuquerque public school district in Bernalillo county;

299. two thousand five hundred dollars (\$2,500) to purchase library books for Van Buren middle school in the Albuquerque public school district in Bernalillo county;

300. two thousand five hundred dollars (\$2,500) to purchase library books for Hawthorne elementary school in the Albuquerque public school district in Bernalillo county;

301. two thousand five hundred dollars (\$2,500) to purchase library books for Emerson elementary school in the Albuquerque public school district in Bernalillo county;

302. two thousand five hundred dollars (\$2,500) to purchase library books for La Mesa elementary school in the Albuquerque public school district in Bernalillo county;

303. two thousand five hundred dollars (\$2,500) to purchase library books for Whittier elementary school in the Albuquerque public school district in Bernalillo county;

304. four thousand dollars (\$4,000) for the design and construction of a display case at Apache elementary school in the Albuquerque public school district in Bernalillo county;

305. ten thousand dollars (\$10,000) for technology upgrades at Rio Grande high school in the Albuquerque public school district in Bernalillo county;

306. twenty-five thousand dollars (\$25,000) for the purchase of land and construction of a facility for the Robert F. Kennedy charter school in the Albuquerque public school district in Bernalillo county;

307. twenty-five thousand dollars (\$25,000) for the purchase of land and construction of a facility for the Nuestros Valores charter school in the Albuquerque public school district in Bernalillo county;

308. twenty-five thousand dollars (\$25,000) for phase 2 improvements for the "smart" lab at the Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

309. twenty-five thousand dollars (\$25,000) for portable classrooms at South Valley academy in the Albuquerque public school district in Bernalillo county;

310. thirty thousand dollars (\$30,000) to furnish and equip Albuquerque high school in the Albuquerque public school district in Bernalillo county;

311. twenty-five thousand dollars (\$25,000) to construct, purchase or renovate a facility for the Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county;

312. twenty-one thousand dollars (\$21,000) to renovate and construct additions to the parking area at Armijo elementary school in the Albuquerque public school district in Bernalillo county;

313. thirty-five thousand dollars (\$35,000) to repair and improve the track at West Mesa high school in the Albuquerque public school district in Bernalillo county;

314. nine thousand eight hundred fifteen dollars (\$9,815) to purchase and install an electronic scoreboard for West Mesa high school in the Albuquerque public school district in Bernalillo county;

315. twenty-six thousand dollars (\$26,000) to construct a facility for the Nuestros Valores charter school in the Albuquerque public school district in Bernalillo county;

316. eighty-five thousand dollars (\$85,000) to purchase and install lighting at the baseball and softball fields at the high school in the Los Lunas public school district in Valencia county;

317. twenty-five thousand dollars (\$25,000) to plan, design, construct, equip and landscape a playing field facility at Gil Sanchez elementary school in the Belen consolidated school district in Valencia county;

318. thirty thousand dollars (\$30,000) to plan, design, construct, equip and landscape a playing field facility at Dennis Chavez elementary school in the Belen consolidated school district in Valencia county;

319. fifty thousand dollars (\$50,000) for educational technology at Governor Bent elementary school in the Albuquerque public school district in Bernalillo county;

320. forty-two thousand dollars (\$42,000) to improve, furnish and equip the lecture hall at Sandia high school in the Albuquerque public school district in Bernalillo county;

321. thirty-eight thousand dollars (\$38,000) for improvements to the baseball field at Del Norte high school in the Albuquerque public school district in Bernalillo county;

322. one hundred eighty thousand dollars (\$180,000) for educational technology for the Montezuma elementary school library in the Albuquerque public school district in Bernalillo county;

323. fifty thousand dollars (\$50,000) for capital improvements at Hodgkin elementary school in the Albuquerque public school district in Bernalillo county; and

324. fifteen thousand dollars (\$15,000) for capital improvements at Comanche elementary school in the Albuquerque public school district in Bernalillo county.

Section 24. STATE BUILDING PROJECTS--CAPITAL PROGRAM FUND--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the property control division of the general services department that the need exists for the issuance of the bonds, the following amounts are appropriated to the capital program fund for the following purposes:

1. one million one hundred thousand dollars (\$1,100,000) to plan and design the state laboratory services building in Albuquerque in Bernalillo county;

2. four hundred thousand dollars (\$400,000) to upgrade the fire system at Fort Bayard medical center in Grant county; and

3. four million six hundred eighty-eight thousand dollars (\$4,688,000) to construct phase 2 of the law enforcement academy in Santa Fe county.

Section 25. STATE BUILDING PROJECTS--PUBLIC BUILDINGS REPAIR FUND--SEVERANCE TAX BONDS APPROPRIATION TO FUND--APPROPRIATION FROM FUND TO CAPITAL PROGRAM FUND.--

A. Pursuant to the provisions of Section 1 of this act, upon certification by the property control division of the general services department that the need exists for the issuance of the bonds, eight million dollars (\$8,000,000) is appropriated to the public buildings repair fund for statewide repairs of state-owned facilities.

B. Eight million dollars (\$8,000,000) is appropriated from the public buildings repair fund to the capital program fund for expenditure in fiscal years 2003 through 2008 in the following amounts for the following purposes, and any unexpended balance remaining at the end of fiscal year 2008 shall revert to the public buildings repair fund:

(1) three hundred eight thousand nine hundred ninety-eight dollars (\$308,998) to provide facility maintenance at the New Mexico youth diagnostic and development center in Albuquerque in Bernalillo county;

(2) one hundred sixty-four thousand six hundred seventy-seven dollars (\$164,677) to improve the commodities warehouse in Albuquerque in Bernalillo county;

(3) three hundred fifty-six thousand two hundred fifty-three dollars (\$356,253) to repair buildings at Turquoise lodge in Albuquerque in Bernalillo county;

(4) sixty-eight thousand forty-eight dollars (\$68,048) for improvements to the southeast income support division office in Bernalillo county;

(5) eighty thousand six hundred dollars (\$80,600) to replace the security entry system at the Tiwa building in Albuquerque in Bernalillo county;

(6) three hundred fifty-one thousand three hundred sixty-four dollars (\$351,364) to renovate the laundry building at the southern New Mexico rehabilitation center in Roswell in Chaves county;

(7) four hundred sixty-two thousand seven hundred fifty-six dollars (\$462,756) to provide boiler, cooler and shower repairs at the New Mexico boys' school in Springer in Colfax county;

(8) sixty thousand one hundred seventy-four dollars (\$60,174) to install an automatic fire sprinkler system at the southern New Mexico correctional facility in Dona Ana county;

(9) six hundred nineteen thousand seven hundred eight dollars (\$619,708) to upgrade the water system at the southern New Mexico correctional facility in Dona Ana county;

(10) three hundred eighty thousand two hundred forty-four dollars (\$380,244) for improvements to the sewer lift station at the southern New Mexico correctional facility in Dona Ana county;

(11) one hundred sixty-seven thousand ninety-four dollars (\$167,094) for improvements to the James M. Murray building in Hobbs in Lea county;

(12) six hundred forty thousand thirty dollars (\$640,030) to complete construction of the New Mexico state police Gallup office in McKinley county;

(13) three hundred thousand dollars (\$300,000) to replace emergency generators at the Las Vegas medical center in San Miguel county;

(14) two hundred fifty thousand dollars (\$250,000) to replace elevators at the Las Vegas medical center in San Miguel county;

(15) one million dollars (\$1,000,000) for installation of boilers at the Las Vegas medical center in San Miguel county;

(16) two hundred ninety-six thousand seven hundred fourteen dollars (\$296,714) for asbestos abatement at the Las Vegas medical center in San Miguel county;

(17) four hundred thirty-seven thousand five hundred sixty dollars (\$437,560) to complete phase 3 fire alarm and security cameras installation at the Las Vegas medical center in San Miguel county;

(18) one hundred four thousand nine hundred seventy-three dollars (\$104,973) to renovate and upgrade the Epi Duran building in Las Vegas in San Miguel county;

(19) sixty-one thousand eight hundred sixty-five dollars (\$61,865) for an addition to the law enforcement academy officer's memorial in Santa Fe county;

(20) one hundred forty-five thousand nine hundred seven dollars (\$145,907) to replace the kitchen flooring at the New Mexico state veterans' home in Truth or Consequences in Sierra county;

(21) one million dollars (\$1,000,000) to provide statewide security upgrades at correctional facilities; and

(22) seven hundred forty-three thousand thirty-five dollars (\$743,035) for repairs, improvements, equipment and furniture for state facilities statewide.

Section 26. UNIVERSITIES AND COLLEGES--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the following agencies of higher learning that the need exists for the issuance of the bonds, the following amounts are appropriated to the following agencies of higher learning for the following purposes:

A. to the governing board of Albuquerque technical-vocational institute:

(1) one hundred twenty thousand dollars (\$120,000) for asphalt and paving for a parking structure at Albuquerque technical-vocational institute in Bernalillo county;

(2) two hundred thousand dollars (\$200,000) to renovate, including surveys, mapping, drainage, electrical improvements, demolition and design, the old Albuquerque public schools' administration building for parking facilities at Albuquerque technical-vocational institute in Bernalillo county;

(3) seventy-five thousand dollars (\$75,000) for computer equipment for the Albuquerque technical-vocational institute westside campus in Albuquerque in Bernalillo county;

(4) ten thousand dollars (\$10,000) for asphalt and paving for a parking structure at Albuquerque technical-vocational institute in Bernalillo county; and

(5) twenty-five thousand dollars (\$25,000) for asphalt and paving for a parking structure at Albuquerque technical-vocational institute in Bernalillo county;

B. to the board of regents of eastern New Mexico university:

(1) five thousand dollars (\$5,000) to purchase an emergency medical services mannequin for classroom training at eastern New Mexico university in Roswell in Chaves county;

(2) five thousand dollars (\$5,000) to renovate classrooms in the occupational technology center at eastern New Mexico university in Roswell in Chaves county;

(3) five thousand dollars (\$5,000) to purchase a bus for eastern New Mexico university in Roswell in Chaves county;

(4) ten thousand dollars (\$10,000) to design, purchase and build tower sites for digital technology at eastern New Mexico university in Portales in Roosevelt county;

(5) twelve thousand five hundred dollars (\$12,500) for phase 1 of a communications and distance learning infrastructure project at eastern New Mexico university in Portales in Roosevelt county;

(6) twelve thousand five hundred dollars (\$12,500) for phase 1 of a communications and distance learning infrastructure project at eastern New Mexico university in Portales in Roosevelt county;

(7) twelve thousand five hundred dollars (\$12,500) for distance education infrastructure at eastern New Mexico university in Portales in Roosevelt county;

(8) twelve thousand five hundred dollars (\$12,500) for phase 1 of a communications and distance learning infrastructure project at eastern New Mexico university in Portales in Roosevelt county;

(9) twenty thousand dollars (\$20,000) to purchase an emergency medical services mannequin for classroom training at eastern New Mexico university in Roswell in Chaves county;

(10) thirty thousand dollars (\$30,000) for renovating classrooms in the occupational technology center at eastern New Mexico university in Roswell in Chaves county;

(11) eighteen thousand dollars (\$18,000) to upgrade technology, including digital television capabilities for television station KENW, for broadcast facilities at eastern New Mexico university in Portales in Roosevelt county;

(12) twenty thousand dollars (\$20,000) to construct a communications and distance learning infrastructure project at eastern New Mexico university in Roswell in Chaves county;

(13) fifty thousand dollars (\$50,000) for soccer field development at eastern New Mexico university in Portales in Roosevelt county;

(14) twenty thousand dollars (\$20,000) for distance education infrastructure at eastern New Mexico university in Portales in Roosevelt county;

(15) twenty thousand dollars (\$20,000) for infrastructure improvements at eastern New Mexico university in Portales in Roosevelt county;

(16) twenty thousand dollars (\$20,000) for phase 1 of a communications and distance learning infrastructure project at eastern New Mexico university in Portales in Roosevelt county; and

(17) twenty thousand dollars (\$20,000) for phase 1 of a communications and distance learning infrastructure project at eastern New Mexico university in Portales in Roosevelt county;

C. to the governing board of Luna vocational-technical institute, forty-five thousand dollars (\$45,000) to purchase a bus for the Luna vocational-technical institute in San Miguel county;

D. to the board of regents of New Mexico highlands university:

(1) two million one hundred fifty thousand dollars (\$2,150,000) to plan, design and construct improvements and to renovate dormitory, cafeteria, bookstore and student union facilities at New Mexico highlands university in Las Vegas in San Miguel county;

(2) ten thousand dollars (\$10,000) for the purchase of band instruments for New Mexico highlands university in Las Vegas in San Miguel county;

(3) thirty-five thousand dollars (\$35,000) for the planning, design, construction, equipping and furnishing of an early childhood center at New Mexico highlands university in San Miguel county; and

(4) one hundred thousand dollars (\$100,000) to plan, design, acquire land for, expand, construct and equip a soccer field and golf course at New Mexico highlands university in San Miguel county;

E. to the board of regents of New Mexico military institute:

(1) thirty-two thousand dollars (\$32,000) to resurface the Godfrey handball courts at the New Mexico military institute in Roswell in Chaves county;

(2) two thousand five hundred dollars (\$2,500) to improve the Colt junior varsity locker room at the New Mexico military institute in Roswell in Chaves county;

(3) one thousand five hundred dollars (\$1,500) to purchase storage compartments for wrestling mats at the New Mexico military institute in Roswell in Chaves county;

(4) eight thousand five hundred dollars (\$8,500) to purchase basketball scoreboards for Cahoon armory at the New Mexico military institute in Roswell in Chaves county;

(5) fourteen thousand dollars (\$14,000) to purchase a scoreboard for the Bronco and Colt baseball complex at the New Mexico military institute in Roswell in Chaves county;

(6) thirteen thousand dollars (\$13,000) to purchase bleachers for the Godfrey athletic center at the New Mexico military institute in Roswell in Chaves county;

(7) twelve thousand dollars (\$12,000) to pave the dirt area around the press box at the Bronco and Colt baseball complex at the New Mexico military institute in Roswell in Chaves county; and

(8) eighteen thousand dollars (\$18,000) to purchase bleachers for the Colt football field at the New Mexico military institute in Roswell in Chaves county;

F. to the board of regents of northern New Mexico state school, twenty thousand dollars (\$20,000) to acquire technology for Espanola's public access channel and television production facility in Rio Arriba county;

G. to the board of regents of New Mexico state university:

(1) eighty thousand dollars (\$80,000) to purchase and install equipment for KRWG television station, to continue converting to digital technology per federal mandate, at New Mexico state university in Las Cruces in Dona Ana county;

(2) seventy-five thousand dollars (\$75,000) for improvements at athletic facilities at New Mexico state university in Las Cruces in Dona Ana county;

(3) twenty thousand dollars (\$20,000) to design and construct additional facilities for the campus golf course at New Mexico state university in Las Cruces in Dona Ana county;

(4) twenty-five thousand dollars (\$25,000) for improvements at athletic facilities at New Mexico state university in Las Cruces in Dona Ana county;

(5) ten thousand dollars (\$10,000) to renovate the rodeo arena at New Mexico state university in Las Cruces in Dona Ana county;

(6) thirty-five thousand dollars (\$35,000) for microfilming historic documents in the archives of the states of Durango and Zacatecas in Mexico for the Rio Grande historic collections at New Mexico state university in Las Cruces in Dona Ana county;

(7) one hundred ninety thousand dollars (\$190,000) for improvements and equipment for the athletic department at New Mexico state university in Las Cruces in Dona Ana county;

(8) fifteen thousand dollars (\$15,000) to upgrade the Carlsbad soil and water conservation district building in Eddy county;

(9) fifteen thousand dollars (\$15,000) to improve the Carlsbad soil and water conservation district office in Eddy county;

(10) twenty-five thousand dollars (\$25,000) for the agricultural science center in Los Lunas in Valencia county to establish feed and plant stocks for grassland and riparian improvements;

(11) twenty-five thousand dollars (\$25,000) for improvements to the Carlsbad soil and water conservation district office in Eddy county;

(12) sixty thousand dollars (\$60,000) to purchase and install equipment for KRWG television station, to continue converting to digital technology per federal mandate, at New Mexico state university in Las Cruces in Dona Ana county;

(13) twenty thousand dollars (\$20,000) for improvements at athletic facilities at New Mexico state university in Las Cruces in Dona Ana county; and

(14) twenty thousand dollars (\$20,000) for the agricultural science center in Los Lunas in Valencia county to establish feed and plant stocks for grassland and riparian improvements;

H. to the governing board of San Juan college:

(1) seven thousand five hundred dollars (\$7,500) for improvements and repairs to the grounds of the Riverview education and recreational center at San Juan college in Farmington in San Juan county;

(2) one hundred thousand dollars (\$100,000) to construct and equip a recreational complex at San Juan college in Farmington in San Juan county;

(3) one hundred twenty thousand dollars (\$120,000) to plan, design, construct and equip a library and educational center at the San Juan college east center in Aztec in San Juan county; and

(4) six hundred fifty thousand dollars (\$650,000) to construct and equip a recreational complex at San Juan college in Farmington in San Juan county;

I. to the board of regents of the university of New Mexico:

(1) eight thousand dollars (\$8,000) for improvements to the heating, ventilation and air conditioning system at the athletic department administration building at the university of New Mexico in Albuquerque in Bernalillo county;

(2) forty thousand dollars (\$40,000) for improvements to the athletic department practice facilities, including the replacement of sod, grading, irrigation and fencing, at the university of New Mexico in Albuquerque in Bernalillo county;

(3) ten thousand dollars (\$10,000) to develop the computer center at the university of New Mexico children's hospital in Albuquerque in Bernalillo county;

(4) five thousand dollars (\$5,000) for improvements to the practice fields for all the sport areas at the university of New Mexico in Albuquerque in Bernalillo county;

(5) two hundred five thousand dollars (\$205,000) to plan and design the centennial engineering center at the university of New Mexico in Albuquerque in Bernalillo county;

(6) twenty-five thousand dollars (\$25,000) for improvements to the athletic department practice facilities, including the replacement of sod, grading, irrigation and fencing, at the university of New Mexico in Albuquerque in Bernalillo county;

(7) twenty-five thousand dollars (\$25,000) for improvements to the athletic department practice facilities, including the replacement of sod, grading, irrigation and fencing, at the university of New Mexico in Albuquerque in Bernalillo county;

(8) ten thousand dollars (\$10,000) to replace sod, grade and fence the athletic grounds and facilities at the university of New Mexico in Albuquerque in Bernalillo county;

(9) twenty-five thousand dollars (\$25,000) for improvements to the athletic department practice facilities, including the replacement of sod, grading, irrigation and fencing, at the university of New Mexico in Albuquerque in Bernalillo county;

(10) one thousand dollars (\$1,000) to purchase portable corrals for the New Mexico horse project of the museum of southwestern biology-mammal division at the university of New Mexico in Albuquerque in Bernalillo county;

(11) forty thousand dollars (\$40,000) to remodel the basement of the library at the university of New Mexico Gallup branch in McKinley county;

(12) forty thousand dollars (\$40,000) to renovate the library at the university of New Mexico campus in Gallup in McKinley county;

(13) twenty thousand dollars (\$20,000) to improve facilities and purchase equipment for the women's varsity basketball program at the university of New Mexico in Albuquerque in Bernalillo county;

(14) fifteen thousand dollars (\$15,000) for the purchase of equipment and furniture for the photography department at the university of New Mexico in Albuquerque in Bernalillo county;

(15) ten thousand dollars (\$10,000) for improvements to the women's softball complex, including bleachers, dugouts, fencing, grading and sod, at the university of New Mexico in Albuquerque in Bernalillo county;

(16) one thousand dollars (\$1,000) to purchase a horse trailer for the New Mexico horse project of the museum of southwestern biology-mammal division at the university of New Mexico in Albuquerque in Bernalillo county;

(17) twenty-five thousand dollars (\$25,000) for improvements to the heating, ventilation and air conditioning system at the athletic department administration building at the university of New Mexico in Albuquerque in Bernalillo county;

(18) eight thousand dollars (\$8,000) to develop the computer center at the university of New Mexico children's hospital in Albuquerque in Bernalillo county;

(19) one thousand dollars (\$1,000) to purchase portable corrals for the New Mexico horse project of the museum of southwestern biology-mammal division at the university of New Mexico in Albuquerque in Bernalillo county;

(20) eighteen thousand dollars (\$18,000) to purchase a horse trailer for the New Mexico horse project of the museum of southwestern biology-mammal division at the university of New Mexico in Albuquerque in Bernalillo county;

(21) one thousand eight hundred dollars (\$1,800) to purchase portable corrals for the New Mexico horse project of the museum of southwestern biology-mammal division at the university of New Mexico in Albuquerque in Bernalillo county;

(22) five thousand dollars (\$5,000) for improvements to the athletic department practice facilities, including the replacement of sod, grading, irrigation and fencing, at the university of New Mexico in Albuquerque in Bernalillo county;

(23) fifty thousand dollars (\$50,000) to purchase, install and upgrade information technology and equipment at the university of New Mexico school of law in Albuquerque in Bernalillo county;

(24) forty thousand dollars (\$40,000) for constructing and installing equipment at the manufacturing training and technology center clean room at the university of New Mexico in Albuquerque in Bernalillo county;

(25) twenty-five thousand dollars (\$25,000) for maintenance equipment for the university of New Mexico championship golf course in Albuquerque in Bernalillo county;

(26) seventy-five thousand dollars (\$75,000) for maintenance equipment for the athletic complex on the south campus of the university of New Mexico in Albuquerque in Bernalillo county;

(27) forty thousand dollars (\$40,000) to remodel the basement of the library at the university of New Mexico Gallup branch in McKinley county;

(28) twenty thousand dollars (\$20,000) to construct, furnish and equip a basement for the Zollinger library at the university of New Mexico Gallup branch in McKinley county;

(29) ten thousand dollars (\$10,000) to purchase storage shelving equipment at the center for regional studies at the university of New Mexico in Albuquerque in Bernalillo county;

(30) thirty thousand dollars (\$30,000) to purchase and install equipment at the L. F. "Tow" Diehm athletic facility at the university of New Mexico in Albuquerque in Bernalillo county;

(31) five thousand dollars (\$5,000) to purchase land and a building at 4121 Cutler avenue for use as a sound studio by the media arts program at the university of New Mexico in Albuquerque in Bernalillo county;

(32) fifty thousand dollars (\$50,000) to improve and equip the university of New Mexico women's softball complex in Albuquerque in Bernalillo county;

(33) twenty-five thousand dollars (\$25,000) for improvements to the women's softball complex, including bleachers, dugouts, fencing, grading and sod, at the university of New Mexico in Albuquerque in Bernalillo county; and

(34) forty thousand dollars (\$40,000) to plan and design the centennial engineering center at the university of New Mexico in Albuquerque in Bernalillo county;

J. to the board of regents of western New Mexico university:

(1) twenty thousand dollars (\$20,000) for a mobile media classroom and information technology project at western New Mexico university in Silver City in Grant county;

(2) ten thousand dollars (\$10,000) for a mobile media classroom and information technology project at western New Mexico university in Silver City in Grant county; and

(3) forty thousand dollars (\$40,000) for a mobile media classroom and information technology project at western New Mexico university in Silver City in Grant county; and

K. to the commission on higher education, one million dollars (\$1,000,000) for improvements to the stadium at the university of New Mexico in Albuquerque in Bernalillo county.

Section 27. SHORT-TERM SEVERANCE TAX BONDS-- DEPARTMENT OF PUBLIC SAFETY--OFFICE OF CULTURAL AFFAIRS.--

A. In addition to the bonds issued pursuant to Section 7-27-14 NMSA 1978 and notwithstanding the limitations of that section, in compliance with the Severance Tax Bonding Act, in fiscal year 2003 the state board of finance may issue and sell severance tax bonds with a term that does not extend beyond the fiscal year in which they are issued in the following amounts and for the following purposes:

(1) an amount not exceeding four million dollars (\$4,000,000) when the secretary of public safety certifies the need for the issuance of the bonds. The proceeds from the sale of the bonds are appropriated to the department of public safety for the purpose of purchasing helicopters for the use of the New Mexico state police; and

(2) an amount not exceeding five million dollars (\$5,000,000) when the office of cultural affairs certifies the need for the issuance of the bonds. The proceeds from the sale of the bonds are appropriated to the office of cultural affairs to design, construct, equip and furnish the palace of the governors project, including the annex site and the statewide services building portion of the project, in Santa Fe in Santa Fe county.

B. No severance tax bonds shall be issued pursuant to this section unless the balance in the severance tax bonding fund as of the date that the bonds are issued is greater than the sum of:

(1) the debt service on the severance tax bonds to be issued pursuant to this section;

(2) the debt service scheduled to be paid during the remainder of the fiscal year on all outstanding severance tax bonds and supplemental severance tax bonds; and

(3) the amount necessary to meet all principal and interest payments on outstanding bonds payable from the severance tax bonding fund on the next two ensuing semiannual payment dates.

Section 28. APPROPRIATION FROM THE GENERAL FUND TO THE CAPITAL PROJECTS FUND.--Twenty-eight million eleven thousand dollars (\$28,011,000) is appropriated from the general fund to the capital projects fund for expenditure in fiscal years 2003 through 2008. Any unexpended balance remaining at the end of fiscal year 2008 shall revert to the capital projects fund. Money in the capital

projects fund shall not revert to any other fund at the end of a fiscal year.

**Section 29. AGING PROJECTS--STATE AGENCY ON AGING--
CAPITAL PROJECTS FUND.--The following amounts are
appropriated from the capital projects fund to the state agency on
aging for expenditure in fiscal years 2003 through 2008, unless
otherwise provided in Section 2 of this act, for the following
purposes:**

1. thirty thousand dollars (\$30,000) to improve Bear Canyon senior center parking lot in Albuquerque in Bernalillo county;

2. seventy thousand dollars (\$70,000) to equip and furnish La Amistad senior center in Albuquerque in Bernalillo county;

3. twenty thousand dollars (\$20,000) to install an exhaust system for the ceramics room and to replace doors to meet the requirements of the Americans with Disabilities Act of 1990 at the North Valley senior center in Albuquerque in Bernalillo county;

4. thirty thousand dollars (\$30,000) to construct an addition to the Carlsbad senior center to provide an adult daycare group respite program in Eddy county;

5. thirty-five thousand dollars (\$35,000) to design, construct and equip an addition to the Artesia senior center's meal site in Eddy county;

6. seventy-five thousand dollars (\$75,000) to construct and furnish the Iyanbito senior center in the Iyanbito chapter of the Navajo Nation in McKinley county;

7. thirty-five thousand dollars (\$35,000) for improvements to the senior center parking lot at the Pueblo Pintado chapter of the Navajo Nation in McKinley county;

8. fifty thousand dollars (\$50,000) to expand and equip the kitchen facility of the Espanola senior center in Espanola in Rio Arriba county;

9. seventy-five thousand dollars (\$75,000) for preparing the site for, planning, designing, constructing and equipping an elder care center in the Pueblo of San Ildefonso in Santa Fe county; and

10. fifty thousand dollars (\$50,000) to design the Tome and Adelino senior center in Valencia county.

Section 30. CULTURAL AFFAIRS PROJECTS--OFFICE OF CULTURAL AFFAIRS--CAPITAL PROJECTS FUND.--The following amounts are appropriated from the capital projects fund to the office of cultural affairs for expenditure in fiscal years 2003 through 2008, unless otherwise provided in Section 2 of this act, for the following purposes:

1. four hundred dollars (\$400) to purchase art by Peter Hurd for the permanent collection at the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county;

2. ten thousand four hundred dollars (\$10,400) for grading, soil stabilization, sidewalks, parking lots and other infrastructure design and installation at the national atomic museum in Albuquerque in Bernalillo county; and

3. two hundred thousand dollars (\$200,000) to plan, design and construct the education building at the national Hispanic cultural center in Albuquerque in Bernalillo county.

Section 31. ECONOMIC DEVELOPMENT PROJECTS--ECONOMIC DEVELOPMENT DEPARTMENT--CAPITAL PROJECTS FUND.--The following amounts are appropriated from the capital projects fund to the economic development department for expenditure in fiscal years 2003 through 2008, unless otherwise provided in Section 2 of this act, for the following purposes:

1. two hundred fifty thousand dollars (\$250,000) for an economic development project in Silver City in Grant county;

2. two hundred thousand dollars (\$200,000) for a master economic development plan for Hidalgo county; and

3. one hundred thousand dollars (\$100,000) for an economic development project in Santa Fe in Santa Fe county.

Section 32. ENVIRONMENT PROJECTS--DEPARTMENT OF ENVIRONMENT--CAPITAL PROJECTS FUND.--The following amounts are appropriated from the capital projects fund to the department of environment for expenditure in fiscal years 2003 through 2008, unless otherwise provided in Section 2 of this act, for the following purposes:

1. fifty-five thousand dollars (\$55,000) for the improvement and expansion of the sewer and water lines in Eagle Nest in Colfax county;
2. forty thousand dollars (\$40,000) to plan and design a master sewage system for Angel Fire in Colfax county;
3. ninety thousand dollars (\$90,000) for phase 1 of wastewater lift station improvements, being a wet well, in Mesilla in Dona Ana county;
4. sixty-seven thousand five hundred dollars (\$67,500) to plan, design, construct and install a water line in Eddy county;
5. twenty thousand dollars (\$20,000) for phase 2 water system improvements and additional loop lines for the Cottonwood rural water cooperative in Eddy county;
6. twenty-five thousand dollars (\$25,000) to construct phase 2, including effluent ponds and a major sewer interceptor, to meet environmental protection agency regulations at the Artesia wastewater treatment plant in Eddy county;
7. one hundred thousand dollars (\$100,000) for a wastewater effluent reuse line in Santa Rosa in Guadalupe county;
8. one hundred thousand dollars (\$100,000) for a monitoring well at the landfill, including installation of the well, in Mora county;
9. seventy thousand dollars (\$70,000) for landfill closure in Mora and Rainsville in Mora county;
10. twenty-five thousand dollars (\$25,000) to plan and develop a domestic water delivery system for the San Luis-Cabezon mutual water association in Sandoval county;
11. seventy-five thousand dollars (\$75,000) for engineering, planning and design of phase 2 for the Cuba water system improvements project in Sandoval county;
12. one hundred thousand dollars (\$100,000) to design and implement phase 1 of the effluent reuse plan in Rio Rancho in Sandoval county;
13. one hundred twenty-five thousand dollars (\$125,000) to improve and upgrade the Santa Fe water treatment facility in Santa Fe county;
14. seven hundred fifty thousand dollars (\$750,000) to improve, upgrade and equip the Santa Fe water treatment facility in Santa Fe county;

15. three hundred fifty thousand dollars (\$350,000) to design and construct a water well in Socorro in Socorro county;

16. fifty thousand dollars (\$50,000) for environmental planning assessment for water, wastewater and air quality for Questa in Taos county;

17. seventy-one thousand four hundred dollars (\$71,400) to design and construct a surface water treatment plant for the Dona Ana mutual domestic water consumers association in Dona Ana county;

18. fifty thousand dollars (\$50,000) for construction of a water line in Bloomfield in San Juan county;

19. twenty thousand dollars (\$20,000) to renovate the water storage tank in Dexter in Chaves county; and

20. twenty thousand dollars (\$20,000) to purchase equipment for the Berino mutual domestic water consumers association in Dona Ana county.

Section 33. STATE ENGINEER PROJECTS--OFFICE OF THE STATE ENGINEER--CAPITAL PROJECTS FUND.--The following amounts are appropriated from the capital projects fund to the office of the state engineer for expenditure in fiscal years 2003 through 2008, unless otherwise provided in Section 2 of this act, for the following purposes:

1. forty thousand dollars (\$40,000) for the drilling of wells and the construction of a pipeline for the Hope community ditch association in Eddy county;

2. five hundred ninety thousand dollars (\$590,000) to complete the initial phase of a hydrographic survey of the Rio Penasco;

3. one million fifty thousand dollars (\$1,050,000) for the Fort Sumner hydrographic survey in multiple counties;

4. two million dollars (\$2,000,000) for the Middle Rio Grande depletion hydrographic survey in multiple counties;

5. two hundred thousand dollars (\$200,000) for a trencher for the Arch Hurley conservancy district in Quay county; and

6. five thousand dollars (\$5,000) for information technology for the Arch Hurley conservancy district in Quay county.

Section 34. HIGHWAY PROJECTS--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--CAPITAL PROJECTS FUND.--
The following amounts are appropriated from the capital projects fund to the state highway and transportation department for expenditure in fiscal years 2003 through 2008, unless otherwise provided in Section 2 of this act, for the following purposes:

1. one hundred fifty thousand dollars (\$150,000) for phase 2 acquisition of rights of way, planning, designing and construction of roadway drainage and pavement improvements to Five Points road from Gatewood avenue to Atrisco drive in the south valley, including sections of this street both inside and outside the city of Albuquerque in Bernalillo county;

2. sixty thousand dollars (\$60,000) to construct speed humps on Alamogordo street in Bernalillo county;

3. one million seven hundred thousand dollars (\$1,700,000) to plan, design and construct an extension of University boulevard to Mesa del Sol in Albuquerque in Bernalillo county, contingent upon a match from the city of Albuquerque and the county of Bernalillo;

4. twenty thousand dollars (\$20,000) for roadway safety enhancements of various roads in Los Ranchos de Albuquerque in Bernalillo county;

5. seventy-five thousand dollars (\$75,000) for street and landscape improvements to Bataan street NW, Dennison street, Townsend street and Trujillo street in Albuquerque in Bernalillo county;

6. three hundred thousand dollars (\$300,000) for an additional vehicle stacking lane from Cattleman's road to the border at the Santa Teresa port of entry in Dona Ana county;

7. three hundred thousand dollars (\$300,000) for improvements at the Antelope Wells port of entry, including right-of-way acquisition and constructing fencing, between Hatchita and the port of Antelope Wells in Hidalgo county;

8. three hundred fifty thousand dollars (\$350,000) for improvements at the Columbus port of entry, including parking, pedestrian walkways, street improvements at and adjacent to the visitor parking lot, security lighting and an information kiosk, in Luna county;

9. five hundred thousand dollars (\$500,000) for improvements to village roads in Columbus in Luna county;

10. one hundred thousand dollars (\$100,000) to improve, including paving, Hasler Valley road in Gallup in McKinley county;

11. fifty-five thousand dollars (\$55,000) for road improvements on county road 1 in McKinley county;

12. fifty thousand dollars (\$50,000) to upgrade and pave La Madera road in eastern Sandoval county;

13. one hundred thousand dollars (\$100,000) for traffic signals at Abrazo road and Unser boulevard in Rio Rancho in Sandoval county;

14. one hundred thousand dollars (\$100,000) for construction of phase 1 and phase 2 for various street improvements, including drainage work, lighting and landscaping, in Moriarty in Torrance county;

15. fifty thousand dollars (\$50,000) to plan, design and construct improvements to Los Lentos road in Los Lunas in Valencia county;

16. eighty-seven thousand five hundred dollars (\$87,500) for improvements to Carson drive in Los Lunas in Valencia county;

17. eighty-seven thousand five hundred dollars (\$87,500) for construction and improvements to comply with the Americans with Disabilities Act of 1990 to the Juan Perea intersection in Los Lunas in Valencia county;

18. thirty-six thousand four hundred dollars (\$36,400) to realign Algodones elementary school road in Sandoval county;

19. twenty-six thousand four hundred dollars (\$26,400) for a traffic signal at Paseo del Norte and Browning avenue in Albuquerque in Bernalillo county;

20. forty-six thousand four hundred dollars (\$46,400) to widen and realign and install sidewalks, streetlights, curbs, gutters and ramps on the First street roadway in Alamogordo in Otero county;

21. twenty-one thousand four hundred dollars (\$21,400) for improvements, including paving and drainage, to county road 84E in Santa Fe county;

22. twenty-six thousand four hundred dollars (\$26,400) for road improvements in Curry county;

23. twenty-five thousand dollars (\$25,000) for the construction of a road to provide access to the Montoya industrial park in Raton in Colfax county;

24. fifty thousand dollars (\$50,000) to repair West Seventh street in Clovis in Curry county;

25. fifty thousand dollars (\$50,000) to repair West Seventh street in Clovis in Curry county;

26. seventy-one thousand four hundred dollars (\$71,400) for road improvements in Sunland Park in Dona Ana county;

27. thirty-one thousand four hundred dollars (\$31,400) for improvements to Hanger Lake road in Dona Ana county;

28. forty thousand dollars (\$40,000) for improvements to Galaxy drive in Dona Ana county;

29. forty-six thousand four hundred dollars (\$46,400) for improvements to South Side River road in Farmington in San Juan county;

30. twenty-five thousand dollars (\$25,000) for improvements to San Juan county roads 6400 and 6500; and

31. fifty thousand dollars (\$50,000) to make road improvements in Torreon and San Luis in Sandoval county.

Section 35. INDIAN PROJECTS--NEW MEXICO OFFICE OF INDIAN AFFAIRS--CAPITAL PROJECTS FUND.--The following amounts are appropriated from the capital projects fund to the New Mexico office of Indian affairs for expenditure in fiscal years 2003 through 2008, unless otherwise provided in Section 2 of this act, for the following purposes:

1. forty-eight thousand dollars (\$48,000) for replacement of a boiler at the Indian pueblo cultural center in Bernalillo county;

2. fifty thousand dollars (\$50,000) to repair and improve a swimming pool for the Pine Hill school for the Ramah chapter of the Navajo Nation in Cibola county;

3. twenty-five thousand dollars (\$25,000) to construct an addition to the Zuni dialysis center, equip the center and renovate the older buildings of the center in McKinley county;

4. three hundred thousand dollars (\$300,000) to plan, design and construct an addition to the Zuni dialysis center, equip the center and renovate the older buildings of the center in McKinley county;

5. fifty thousand dollars (\$50,000) to purchase a motor grader to maintain school bus routes for the Smith Lake chapter of the Navajo Nation in McKinley county;

6. one hundred thousand dollars (\$100,000) to purchase a motor grader to maintain school bus routes for the Smith Lake chapter of the Navajo Nation in McKinley county;

7. forty thousand dollars (\$40,000) for improvements to a multipurpose building at the Mexican Springs chapter of the Navajo Nation in McKinley county;

8. fifty-five thousand dollars (\$55,000) for an electrical powerline extension for the Manuelito chapter of the Navajo Nation in McKinley county;

9. thirty thousand dollars (\$30,000) for the construction of a powerline for the Lake Valley chapter of the Navajo Nation in McKinley county;

10. forty thousand dollars (\$40,000) to construct bathroom additions for the community in the Escavada wash area at the Nageezi chapter of the Navajo Nation in McKinley county;

11. seventy thousand dollars (\$70,000) to purchase a backhoe and front-end loader for the Nenahnezad chapter of the Navajo Nation in San Juan county;

12. one hundred thousand dollars (\$100,000) to plan, design and construct a powerline extension for the Shiprock chapter of the Navajo Nation in San Juan county;

13. forty thousand dollars (\$40,000) for bathroom additions at the Littlewater chapter of the Navajo Nation in McKinley county;

14. forty thousand dollars (\$40,000) for constructing, plumbing and electrical wiring for bathroom additions for residents of the Otis community at the Huerfano chapter of the Navajo Nation in San Juan county;

15. fifty thousand dollars (\$50,000) to design and construct a pump house and purchase a water pump for the Pueblo of Cochiti in Sandoval county;

16. thirty thousand dollars (\$30,000) for information technology enhancement for five Sandoval Indian pueblos, incorporated, in Sandoval county;

17. forty-five thousand dollars (\$45,000) to improve the site, install a modular building and connect infrastructure for an interagency law enforcement center at the Pueblo of Jemez in Sandoval county;

18. fifty thousand dollars (\$50,000) to complete construction to the exhibition areas of the Poeh cultural center and museum for the Pueblo of Pojoaque in Santa Fe county;

19. five hundred thousand dollars (\$500,000) for recreational fields at the Santa Fe Indian school in Santa Fe county;

20. twenty thousand dollars (\$20,000) to plan and construct an addition to the Shiprock chapter house of the Navajo Nation in San Juan county;

21. fifty-one thousand four hundred dollars (\$51,400) for a water line extension, including clearances, right-of-way acquisition and construction, in the Crystal chapter of the Navajo Nation in San Juan county;

22. seventy-one thousand four hundred dollars (\$71,400) to plan, design and construct a facility for traditional and religious ceremonies at the Pueblo of Pojoaque in Santa Fe county;

23. twenty-five thousand dollars (\$25,000) for repairs and improvements to the Indian pueblo cultural center in Albuquerque in Bernalillo county; and

24. twenty-one thousand four hundred dollars (\$21,400) for the construction of drainage, lighting and health and safety amenities for the Santa Ana business center for the Pueblo of Santa Ana in Sandoval county.

Section 36. STATE LAND OFFICE PROJECT--CAPITAL PROJECTS FUND.--Thirty thousand dollars (\$30,000) is appropriated from the capital projects fund to the state land office for expenditure in fiscal years 2003 through 2008, unless otherwise provided in Section 2 of this act, for signage, including design and mounting, and design and casting of a sculptural bust of Senator Edward J. Lopez at the state land office in Santa Fe in Santa Fe county.

Section 37. LOCAL PROJECTS--LOCAL GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION--CAPITAL PROJECTS FUND.--The following amounts are appropriated from the capital projects fund to the local government division of the department of finance and administration for expenditure in fiscal years 2003 through 2008, unless otherwise provided in Section 2 of this act, for the following purposes:

1. one hundred thousand dollars (\$100,000) to design, renovate, construct, furnish and equip the Heights community center in Albuquerque in Bernalillo county;

2. one hundred thousand dollars (\$100,000) for reforestation, irrigation and landscaping in the Silver Hill historic district in Albuquerque in Bernalillo county;

3. one hundred fifty thousand dollars (\$150,000) to develop the site for, plan, design, construct and equip phase 1 of a multipurpose family service center in the south valley of Bernalillo county;

4. fifty thousand dollars (\$50,000) for phase 1 planning, design and improvements to the Tijeras village center in Bernalillo county;

5. five hundred thousand dollars (\$500,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

6. twenty-five thousand dollars (\$25,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

7. one hundred thousand dollars (\$100,000) to purchase and renovate the old fraternal order of the Elks building on Edith boulevard in Albuquerque in Bernalillo county;

8. sixty thousand dollars (\$60,000) to design, renovate, demolish, construct, equip and furnish phase 2 improvements to the Mesa Verde community center in Albuquerque in Bernalillo county;

9. sixty thousand dollars (\$60,000) to improve, upgrade and equip the West Bluff park facility in Albuquerque in Bernalillo county;

10. seventy-five thousand dollars (\$75,000) to purchase handheld laser speed detectors for the west area command of the Albuquerque police department in Bernalillo county;

11. sixty-five thousand dollars (\$65,000) to plan, design, construct and equip the renovation of Goodrich park in Albuquerque in Bernalillo county;

12. three hundred thousand dollars (\$300,000) to construct the South Valley health clinic in Bernalillo county;

13. five hundred thousand dollars (\$500,000) to plan, design and construct the Wheels museum and improvements, including land acquisition, a building and artifacts, in Albuquerque in Bernalillo county;

14. twenty thousand dollars (\$20,000) to renovate and repair the special collections branch of the Albuquerque public library in Albuquerque in Bernalillo county;

15. thirty thousand dollars (\$30,000) to plan and design a public park in Los Ranchos de Albuquerque in Bernalillo county;

16. thirty thousand dollars (\$30,000) to design, purchase and install fire hydrants in Los Ranchos de Albuquerque in Bernalillo county;

17. forty thousand dollars (\$40,000) to plan, design and construct the Alameda little league fields in Albuquerque in Bernalillo county;

18. ten thousand dollars (\$10,000) for the design, development, fabrication, construction, purchase and installation of exhibits, furniture, fixtures and equipment at the Explora science center and children's museum in Albuquerque in Bernalillo county;

19. one hundred thousand dollars (\$100,000) for the Adobe Acres neighborhood drainage project in Bernalillo county;

20. thirty thousand dollars (\$30,000) to construct, renovate and equip the primary care clinic in Reserve in Catron county;

21. ninety thousand dollars (\$90,000) for a mammography van for Chaves county;

22. fifteen thousand dollars (\$15,000) to plan, design and construct or acquire and renovate a food kitchen for Grants in Cibola county;

23. twenty-five thousand dollars (\$25,000) to purchase a backhoe for the road department in Cibola county;

24. twenty-five thousand dollars (\$25,000) to renovate the fire station for the Cimarron fire department in Colfax county;

25. fifty thousand dollars (\$50,000) for the design and construction of an addition to the Life Saver food bank facility in Clovis in Curry county;

26. one hundred thousand dollars (\$100,000) to repair the swimming pool in Fort Sumner in De Baca county;

27. ninety thousand dollars (\$90,000) for the plan, design and construction of an administrative office for the Berino mutual domestic water consumers association in Dona Ana county;

28. one hundred five thousand dollars (\$105,000) to construct and equip an administrative building for the Anthony water system in Dona Ana county;
29. sixty thousand dollars (\$60,000) for improvements to the parking area at La Clinica de Familiar at Sunland Park medical and dental clinic in Sunland Park in Dona Ana county;
30. one hundred fifty-five thousand dollars (\$155,000) to plan, design and construct an addition to the Del Cerro community center in Dona Ana county;
31. seventy thousand dollars (\$70,000) for purchasing land for and planning and designing the restoration of the Mesquite historic district in Las Cruces in Dona Ana county;
32. fifty thousand dollars (\$50,000) for expansion of the rural medical residency program facility at Memorial medical center in Las Cruces in Dona Ana county;
33. fifty thousand dollars (\$50,000) to purchase and install medical equipment at the First Step pediatrics and women's health center at Memorial medical center in Las Cruces in Dona Ana county;
34. twenty-seven thousand five hundred dollars (\$27,500) to plan, design and construct the First Step pediatrics and women's services center in Las Cruces in Dona Ana county;
35. one hundred ninety-five thousand dollars (\$195,000) to purchase land for and construct the Hatch health and human services center in Dona Ana county;
36. eighty-seven thousand five hundred dollars (\$87,500) to design and construct a youth sports complex in Carlsbad in Eddy county;
37. three hundred fifty thousand dollars (\$350,000) to design, construct, equip and furnish a building for the Carlsbad National Cave and Karst research institute in Eddy county;
38. thirty thousand dollars (\$30,000) to improve and repair the sheriff's posse arena in Eddy county;
39. thirty thousand dollars (\$30,000) to develop and expand Woodbine cemetery in Artesia in Eddy county;
40. one hundred thousand dollars (\$100,000) to renovate the Grant county detention center;

41. seventy-five thousand dollars (\$75,000) to purchase street paving vehicles and maintenance vehicles for Lordsburg in Hidalgo county;
42. three hundred thousand dollars (\$300,000) to construct a multipurpose facility for athletic programming and activities in Hobbs in Lea county;
43. thirty thousand dollars (\$30,000) to plan and design the demolition and removal of condemned buildings, including the removal of hazardous materials, in Eunice in Lea county;
44. sixty-eight thousand dollars (\$68,000) to construct a municipal cemetery, including architectural and engineering costs, in Eunice in Lea county;
45. eighty-seven thousand dollars (\$87,000) to plan, design and construct an ambulance garage in Tatum in Lea county;
46. four hundred thousand dollars (\$400,000) for planning, designing and constructing the repair and renovation of the town hall in Carrizozo in Lincoln county;
47. two hundred thousand dollars (\$200,000) to plan, design and construct restrooms and shade structures at the amphitheater and open air pavilion in Deming in Luna county;
48. forty-five thousand dollars (\$45,000) for capital improvements related to the adventure Gallup tourism project in McKinley county;
49. thirty thousand dollars (\$30,000) to purchase a vehicle for Wagon Mound in Mora county;
50. twenty-five thousand dollars (\$25,000) for upgrading and improvements to the fire station in Mora in Mora county;
51. three hundred thirty thousand dollars (\$330,000) to plan, design and construct courthouse renovations in Mora county;
52. eleven thousand five hundred dollars (\$11,500) to construct a veterans of foreign wars community center in Mora county;
53. sixty-five thousand dollars (\$65,000) to plan, design, construct, furnish, equip and develop the site for El Rito community center in Rio Arriba county;
54. one hundred thousand dollars (\$100,000) for the constructing, equipping and furnishing of a municipal office and fire department complex in Pecos in San Miguel county;

55. forty thousand dollars (\$40,000) to improve the building and purchase an activity bus for the West Las Vegas head start program in San Miguel county;

56. one hundred fifty thousand dollars (\$150,000) for the downtown revitalization project to include planning, designing and constructing a new city hall in Las Vegas in San Miguel county;

57. fifty thousand dollars (\$50,000) for improvements and equipment for North Hills park in Rio Rancho in Sandoval county;

58. fifty thousand dollars (\$50,000) to construct and equip an addition to the Jemez Springs fire station in Sandoval county;

59. twenty-five thousand dollars (\$25,000) to design and construct safety and code compliant upgrades at the Benny J. Chavez community center in Santa Fe county;

60. five thousand dollars (\$5,000) to renovate Cathedral park in Santa Fe in Santa Fe county;

61. five hundred thousand dollars (\$500,000) to plan, design and engineer the redevelopment of the Santa Fe railyard in Santa Fe in Santa Fe county;

62. five thousand dollars (\$5,000) for the renovation of Cathedral park in Santa Fe in Santa Fe county;

63. fifty thousand dollars (\$50,000) for planning, designing, constructing and equipping phase 2 of the youth shelter and family service facility in Santa Fe county;

64. two hundred thousand dollars (\$200,000) to renovate El Museo Cultural de Santa Fe in Santa Fe in Santa Fe county;

65. fifty thousand dollars (\$50,000) to purchase land adjacent to the well for El Prado water and sanitation district in Taos county;

66. fifty thousand dollars (\$50,000) for the design, engineering and construction of a multi-classroom building to house a living machine and a biolarium at the Yaxche learning center in Taos county;

67. fifty thousand dollars (\$50,000) to construct the final phase of the Taos youth and family center in Taos county;

68. one hundred thirty-three thousand dollars (\$133,000) to plan, design and construct a community center in Llano Quemado in Taos county;

69. one hundred fifty thousand dollars (\$150,000) to improve streets and to improve and construct additions to the Red River conference center in Red River in Taos county;

70. eighty thousand dollars (\$80,000) to renovate and upgrade the Estancia municipal building in Estancia in Torrance county;

71. seventy-five thousand dollars (\$75,000) to improve and equip the Rio Communities substation of the Rio Grande estates fire department in Valencia county;

72. two hundred thousand dollars (\$200,000) to plan, design and construct a fire and police station in Bosque Farms in Valencia county;

73. twenty-one thousand four hundred dollars (\$21,400) to construct an addition to the public library in Capitan in Lincoln county;

74. seventy-one thousand four hundred dollars (\$71,400) to construct and equip a metal building for the Grant county fairgrounds;

75. thirty-one thousand four hundred dollars (\$31,400) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

76. ten thousand dollars (\$10,000) to acquire land in the Paradise Hills neighborhood of Bernalillo county to expand soccer and little league facilities, including parking;

77. forty-one thousand four hundred dollars (\$41,400) for field improvements, including batting cages, dugouts, gates, safety netting and score boxes, for Paradise Hills little league in Albuquerque in Bernalillo county;

78. forty-one thousand four hundred dollars (\$41,400) to construct safety and code compliant upgrades at the Bennie J. Chavez community center in Chimayo in Santa Fe county;

79. thirty thousand dollars (\$30,000) to purchase and install computers and equipment for the community health facility and detoxification center serving Taos and Colfax counties in Taos in Taos county;

80. twenty thousand dollars (\$20,000) to engineer and construct a concrete sidewalk on San Juan de Rio from Sabana Grande to Leon Grande in Rio Rancho in Sandoval county;

81. twenty-five thousand dollars (\$25,000) to construct, equip and furnish a safety facility and municipal court building in Tularosa in Otero county;

82. twenty-three thousand dollars (\$23,000) for the design and construction of infrastructure projects, including water, sewer, roads, trails, acequias and sidewalks, for Arbolera de Vida project in Albuquerque in Bernalillo county;

83. twenty-two thousand dollars (\$22,000) for improvements to Tiguex park in Albuquerque in Bernalillo county;

84. seventy-one thousand four hundred dollars (\$71,400) to purchase a backhoe for the Cibola county road department;

85. seventy-one thousand four hundred dollars (\$71,400) to engineer and construct a concrete sidewalk on San Juan de Rio from Sabana Grande to Leon Grande in Rio Rancho in Sandoval county;

86. fifteen thousand dollars (\$15,000) for a repeater for the police, fire and ambulance services in Logan in Quay county;

87. twenty-one thousand four hundred dollars (\$21,400) for improvements to McGee park county fairgrounds in San Juan county;

88. thirty thousand four hundred dollars (\$30,400) for phase 2 construction, including engineering and architectural costs, of the central fire station in Dexter in Chaves county;

89. twenty-one thousand dollars (\$21,000) to develop and expand Woodbine cemetery in Artesia in Eddy county;

90. twenty-one thousand four hundred dollars (\$21,400) to plan and design the streetscape for the downtown area in Hobbs in Lea county;

91. seventy-one thousand four hundred dollars (\$71,400) for construction of an animal shelter in Carlsbad in Eddy county;

92. eleven thousand four hundred dollars (\$11,400) for improvements and equipment for North Hills park in Rio Rancho in Sandoval county;

93. forty thousand dollars (\$40,000) to plan and design the streetscape for the downtown area in Hobbs in Lea county;

94. thirty-one thousand four hundred dollars (\$31,400) to design and construct a fire station for the Malaga volunteer fire department in Eddy county;

95. fifty-one thousand four hundred dollars (\$51,400) to construct a health facility in the south valley in Bernalillo county;

96. seventy-one thousand four hundred dollars (\$71,400) for phase 1 construction of a teen and family multipurpose center for the Santa Fe youth and family center consortium at Tierra Contenta in Santa Fe county;

97. fifty thousand dollars (\$50,000) to plan, design and construct a fire station for the Truchas volunteer fire department in Rio Arriba county;

98. twenty-one thousand four hundred dollars (\$21,400) to plan, design, construct, furnish, equip and develop the site for El Rito community center in Rio Arriba county;

99. thirty thousand dollars (\$30,000) to improve community support facilities in San Miguel in Dona Ana county;

100. thirty thousand dollars (\$30,000) to plan, design and construct a bicycle trail and pedestrian and landscaping improvements on the southeast corner of Montgomery and Tramway boulevards in Albuquerque in Bernalillo county;

101. eleven thousand dollars (\$11,000) for exhibits, furniture, fixtures and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county;

102. seventy-one thousand four hundred dollars (\$71,400) to construct a fire and safety training tower building in McKinley county;

103. ten thousand dollars (\$10,000) for a concession stand and improvements to Caja del Rio road and infrastructure at the Santa Fe recreational fields in Santa Fe county;

104. twenty-five thousand dollars (\$25,000) to purchase and install olympic power-lifting equipment at High Desert athletic club in Santa Fe county;

105. thirty thousand dollars (\$30,000) for reforestation, irrigation and landscaping in the Silver Hill historic district in Albuquerque in Bernalillo county;

106. twenty-one thousand four hundred dollars (\$21,400) to develop the site for, plan, design, construct and equip phase 1 of a multipurpose family service center in the south valley of Bernalillo county;

107. fifty thousand dollars (\$50,000) for expansion and equipment for the fitness room, ceramic room and preschool room for the West Mesa community center in Albuquerque in Bernalillo county; and

108. seventy-one thousand four hundred dollars (\$71,400) for furnishings and technology equipment at the health clinic in Hidalgo county.

Section 38. PUBLIC EDUCATION PROJECTS--STATE DEPARTMENT OF PUBLIC EDUCATION--CAPITAL PROJECTS FUND.--The following amounts are appropriated from the capital projects fund to the state department of public education for expenditure in fiscal years 2003 through 2008, unless otherwise provided in Section 2 of this act, for the following purposes:

1. sixty-seven thousand dollars (\$67,000) to plan, design and construct a staff parking area and designated bus drop-off and pick-up area at Armijo elementary school in the Albuquerque public school district in the south valley of Bernalillo county;
2. fifty thousand dollars (\$50,000) for educational technology at La Mesa elementary school in the Albuquerque public school district in Bernalillo county;
3. fifty thousand dollars (\$50,000) for the library at La Mesa elementary school in the Albuquerque public school district in Bernalillo county;
4. twenty-five thousand dollars (\$25,000) to improve and landscape the playground and develop an outdoor learning center for Bel-Air elementary school in the Albuquerque public school district in Bernalillo county;
5. seventy thousand dollars (\$70,000) for educational technology for Carlos Rey, Alamosa, Lavaland and Mary Ann Binford elementary schools and Jimmy E. Carter and Truman middle schools in the Albuquerque public school district in Bernalillo county;
6. one hundred twenty thousand dollars (\$120,000) for educational technology for McCollum elementary school in the Albuquerque public school district in Bernalillo county;
7. fifty-five thousand dollars (\$55,000) for educational technology for Kennedy middle school in the Albuquerque public school district in Bernalillo county;
8. ninety-five thousand dollars (\$95,000) to purchase equipment and improve and construct phase 2 of the softball field project at Roswell high school in the Roswell independent school district in Chaves county;
9. ten thousand dollars (\$10,000) for security lighting at Thoreau elementary school in the Gallup-McKinley county public school district in McKinley county;
10. twenty-four thousand dollars (\$24,000) for transformers and pads to supply electricity to new classrooms for the full-day kindergarten program in the Aztec municipal school district in San Juan county;

11. two hundred twenty-five thousand dollars (\$225,000) to plan, design and construct a catchment system for irrigation improvements at the baseball fields in the Santa Fe public school district in Santa Fe county;

12. fifty thousand dollars (\$50,000) to make improvements and plan, design and construct tennis and basketball courts and a walking track for the Nambe head start program in the Pojoaque Valley public school district in Santa Fe county;

13. one hundred thousand dollars (\$100,000) to plan and develop a school-district-owned teacher housing project in the Santa Fe public school district in Santa Fe county;

14. one million seven hundred thousand dollars (\$1,700,000) for laptop computers for seventh graders statewide;

15. fifty thousand dollars (\$50,000) to purchase and install playground equipment for La Merced elementary school in the Belen consolidated school district in Valencia county;

~~16. fifty thousand dollars (\$50,000) for upgrading the science rooms at Goddard high school in the Roswell independent school district in Chaves county;]~~

17. fifteen thousand dollars (\$15,000) for an addition of a car bay to the automotive facility at the Los Lunas schools career academy in the Los Lunas public school district in Valencia county;

18. six thousand four hundred dollars (\$6,400) for mariachi uniforms for East San Jose elementary school in the Albuquerque public school district in Bernalillo county;

19. thirty-five thousand dollars (\$35,000) for educational technology for East Mountain high school in the Albuquerque public school district in Bernalillo county;

20. ten thousand dollars (\$10,000) for renovating the lecture hall at Sandia high school in the Albuquerque public school district in Bernalillo county;

21. ten thousand dollars (\$10,000) to purchase, construct or renovate a facility for the Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county;

22. ten thousand dollars (\$10,000) for portable classrooms at South Valley academy in the Albuquerque public school district in Bernalillo county;

23. ten thousand dollars (\$10,000) for educational technology improvements for Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

24. seventy-one thousand four hundred dollars (\$71,400) to purchase an activity bus for the Santa Rosa consolidated school district in Guadalupe county;
25. twenty thousand dollars (\$20,000) for capital improvements at Jimmy E. Carter middle school in the Albuquerque public school district in Bernalillo county;
26. twenty-five thousand dollars (\$25,000) for capital projects at East Mountain high school in the Albuquerque public school district in Bernalillo county;
27. twenty-six thousand four hundred dollars (\$26,400) to purchase, construct or renovate a facility for the Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county;
28. fifty thousand dollars (\$50,000) to make improvements and plan, design and construct tennis and basketball courts and a walking track for the Nambé head start program in the Pojoaque valley public school district in Santa Fe county;
29. three thousand dollars (\$3,000) for improvements to the sidewalks in the Floyd municipal school district in Roosevelt county;
30. eighteen thousand four hundred dollars (\$18,400) to renovate the Floyd high school science laboratory in the Floyd municipal school district in Roosevelt county;
31. sixty thousand dollars (\$60,000) to repair doors and hardware and to upgrade windows for Ernest Stapleton elementary school in the Rio Rancho public school district in Sandoval county;
32. twenty thousand dollars (\$20,000) for portable classrooms at South Valley academy in the Albuquerque public school district in Bernalillo county;
33. twenty thousand dollars (\$20,000) for improvements at the Eldorado high school cluster libraries in the Albuquerque public school district in Bernalillo county;
34. twenty thousand dollars (\$20,000) for improvements and equipment for the weight rooms at Highland and Manzano high schools in the Albuquerque public school district in Bernalillo county;
35. sixteen thousand four hundred dollars (\$16,400) to renovate and construct additions to the parking area at Armijo elementary school in the Albuquerque public school district in Bernalillo county;
36. seventy-one thousand four hundred dollars (\$71,400) to purchase and install lighting at the baseball and softball fields at the high school in the Los Lunas public school district in Valencia county; and

37. seventy-one thousand four hundred dollars (\$71,400) for educational technology at Sandia high school in the Albuquerque public school district in Bernalillo county.

Section 39. HIGHER EDUCATION PROJECTS--INSTITUTIONS OF HIGHER LEARNING--CAPITAL PROJECTS FUND.--The following amounts are appropriated from the capital projects fund to the following agencies of higher learning for expenditure in fiscal years 2003 through 2008, unless otherwise provided in Section 2 of this act, for the following purposes:

A. to the governing board of Albuquerque technical-vocational institute:

(1) one hundred fifty thousand dollars (\$150,000) for asphalt and paving for a parking structure at Albuquerque technical-vocational institute in Bernalillo county;

(2) one hundred thousand dollars (\$100,000) to renovate, including surveys, mapping, drainage, electrical improvements, demolition and design, the old Albuquerque public schools' administration building for parking facilities at Albuquerque technical-vocational institute in Bernalillo county;

(3) fifty thousand dollars (\$50,000) to renovate, including surveys, mapping, drainage, electrical improvements, demolition and design, the old Albuquerque public schools' administration building for parking facilities at Albuquerque technical-vocational institute in Bernalillo county; and

(4) seventy-one thousand four hundred dollars (\$71,400) for asphalt and paving for a parking structure at Albuquerque technical-vocational institute in Bernalillo county;

B. to the board of regents of New Mexico institute of mining and technology, twenty-five thousand dollars (\$25,000) for golf course improvements at New Mexico institute of mining and technology in Socorro in Socorro county;

C. to the board of regents of northern New Mexico state school, one hundred thousand dollars (\$100,000) for land acquisition;

D. to the board of regents of New Mexico state university:

(1) twenty-five thousand dollars (\$25,000) for improvements to the golf course at New Mexico state university in Las Cruces in Dona Ana county;

(2) one hundred twenty thousand dollars (\$120,000) to repair and remodel the memorial tower at New Mexico state university in Las Cruces in Dona Ana county; and

(3) twenty-one thousand dollars (\$21,000) to purchase and install equipment for KRWG television station, to continue converting to digital technology per federal mandate, at New Mexico state university in Las Cruces in Dona Ana county;

E. to the board of regents of the university of New Mexico:

(1) two hundred thousand dollars (\$200,000) for the acquisition, renovation, equipping and furnishing of a suitable location for the Charlie Morrissey research hall at the university of New Mexico in Bernalillo county; and

(2) sixteen thousand four hundred dollars (\$16,400) to purchase storage shelving equipment at the center for regional studies at the university of New Mexico in Albuquerque in Bernalillo county; and

F. to the commission on higher education, one million dollars (\$1,000,000) for improvements to the stadium at the university of New Mexico in Albuquerque in Bernalillo county.

Section 40. STATE CAPITOL PROJECT--LEGISLATIVE COUNCIL SERVICE--CASH BALANCES.--One hundred fifty-six thousand dollars (\$156,000) is appropriated from legislative cash balances to the legislative council service for expenditure in fiscal years 2003 through 2008 for increased security at the capitol north, capitol underground parking and additional security system enhancements for other areas at the state capitol in Santa Fe in Santa Fe county.

Section 41. GAME AND FISH PROJECTS--DEPARTMENT OF GAME AND FISH--GAME PROTECTION FUND.--

A. Three million dollars (\$3,000,000) is appropriated from the game protection fund to the department of game and fish for expenditure in fiscal years 2003 through 2008 to refurbish and repair Eagle Nest dam in Colfax county. Any unexpended balance remaining at the end of fiscal year 2008 shall revert to the game protection fund.

B. Five hundred thousand dollars (\$500,000) is appropriated from the game protection fund to the department of game and fish for expenditure in fiscal years 2003 through 2008 to plan, design, construct, equip and furnish a wildlife conservation

and environmental education center in Santa Fe county. Any unexpended balance remaining at the end of fiscal year 2008 shall revert to the game protection fund.

C. One million three hundred thousand dollars (\$1,300,000) is appropriated from the game protection fund to the department of game and fish for expenditure in fiscal years 2003 through 2008 to acquire land for, design, construct and equip a warm water fish hatchery, rearing station and educational center in Santa Rosa in Guadalupe county. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall revert to the game protection fund.

Section 42. MINERS' COLFAX MEDICAL CENTER--MINERS' TRUST FUND.--Five million dollars (\$5,000,000) is appropriated from the miners' trust fund to the board of trustees of miners' Colfax medical center for expenditure in fiscal years 2003 through 2008 for an addition and renovations to miners' Colfax medical center in Raton in Colfax county. Any unexpended balance remaining at the end of fiscal year 2008 shall revert to the miners' trust fund.

Section 43. HIGHWAY PROJECTS--STATE ROAD FUND APPROPRIATIONS--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT.--

A. The following amounts are appropriated from the state road fund to the state highway and transportation department for expenditure in fiscal years 2003 through 2008 for the following purposes:

1. two million dollars (\$2,000,000) to rehabilitate and reconstruct New Mexico state highway 11 in Luna county; and

2. two million five hundred thousand dollars (\$2,500,000) to reconstruct improvements to Anapra road between Columbus and Santa Teresa in Luna and Dona Ana counties.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall revert to the state road fund.

Section 44. SOUTHSIDE SENIOR CENTER--CHANGE PURPOSE TO CONSTRUCT AND EQUIP CENTER ADJACENT TO GENOVEVA CHAVEZ COMMUNITY CENTER IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the state agency on aging pursuant to Subsection 19 of Section 3 of Chapter 110 of Laws 2002 to design a senior center in the southside of Santa Fe in Santa Fe county shall not be expended for

the original purpose but are reauthorized and appropriated to construct and equip a southside senior center adjacent to the Genoveva Chavez community center in Santa Fe county.

Section 45. E-COMMERCE INITIATIVES STATEWIDE--CHANGE PURPOSE FOR BORDER AUTHORITY FACILITY IN SANTA TERESA IN DONA ANA COUNTY.--The project authorized in Subsection 3 of Section 12 of Chapter 110 of Laws 2002 to the economic development department to purchase and install technology infrastructure for e-commerce initiatives statewide is void. The state board of finance may issue and sell severance tax bonds upon certification by the border authority that the need exists for the issuance of the bonds in the amount of five thousand dollars (\$5,000) to the border authority to construct and furnish a facility to house the border authority in Santa Teresa in Dona Ana county.

Section 46. E-COMMERCE INITIATIVES STATEWIDE--CHANGE PURPOSE FOR BORDER AUTHORITY FACILITY IN SANTA TERESA IN DONA ANA COUNTY.--The project authorized in Subsection 1 of Section 12 of Chapter 110 of Laws 2002 to the economic development department to purchase and install technology infrastructure for e-commerce initiatives statewide is void. The state board of finance may issue and sell severance tax bonds upon certification by the border authority that the need exists for the issuance of the bonds in the amount of twenty thousand dollars (\$20,000) to the border authority to construct and equip a building for the border authority in Santa Teresa in Dona Ana county.

Section 47. EAST MOUNTAIN CHARTER HIGH SCHOOL LIBRARY IMPROVEMENTS--CHANGE PURPOSE AND AGENCY FOR WATER SYSTEM IMPROVEMENTS IN TIJERAS IN BERNALILLO COUNTY.--Eighty thousand dollars (\$80,000) of the proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection 17 of Section 23 of Chapter 110 of Laws 2002 to purchase library books, shelving and library furniture for East Mountain charter high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated to the

department of environment for phase 3 water system improvements in Tijeras in Bernalillo county.

Section 48. LOS GRIEGOS-CANDELARIA AREA SEWER IMPROVEMENTS--CHANGE PURPOSE FOR NORTH VALLEY AREA SEWER LINE PROJECT IN BERNALILLO COUNTY.--Severance tax bond proceeds appropriated to the department of environment pursuant to Subsection VV of Section 10 of Chapter 2 of Laws 1999 (1st S.S.) for sewer improvements in the Los Griegos-Candelaria area of the north valley of Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated to continue planning, design and construction of sewer lines in the north valley area of Bernalillo county. The period of time in which the appropriation may be expended is extended through fiscal year 2008.

Section 49. ANTHONY LA CLINICA DE FAMILIA FURNISH--CHANGE PURPOSE AND AGENCY FOR WATER AND WASTEWATER IMPROVEMENTS IN SUNLAND PARK IN DONA ANA COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 108 of Section 22 of Chapter 110 of Laws 2002 to furnish a facility for La Clinica de Familia in Anthony in Dona Ana county shall not be expended for the original purpose but are reauthorized and appropriated to the department of environment for water and wastewater improvements in Sunland Park in Dona Ana county.

Section 50. CORONA WATER TANK--CHANGE PURPOSE TO WATER SYSTEM IMPROVEMENTS IN CORONA IN LINCOLN COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the department of environment pursuant to Subsections 17 and 70 of Section 15 of Chapter 110 of Laws 2002 to construct a water tank in Corona in Lincoln county shall not be expended for the original purpose but are reauthorized and appropriated for water system improvements in Corona in Lincoln county.

Section 51. ELEPHANT BUTTE WASTEWATER TREATMENT PLANT AND COLLECTION LINES IN SIERRA COUNTY--EXPAND PURPOSE TO INCLUDE PLAN AND DESIGN.--The proceeds from the sale of severance tax bonds appropriated to the department of environment pursuant to Subsection 39 of Section 15 of Chapter 110 of Laws 2002 to construct a wastewater treatment plant and collection lines in Elephant Butte and Elephant Butte state park in Sierra county may also be expended to plan and design a wastewater treatment plant and collection lines.

Section 52. EDUCATIONAL RETIREMENT BOARD BUILDING--EXTEND EXPENDITURE PERIOD.--The period of time in which the appropriations made from the educational retirement fund to the educational retirement board pursuant to Laws 2000 (2nd S.S.), Chapter 23, Section 29 to plan, design, renovate, construct, equip and furnish an addition to the educational retirement board building and pursuant to Laws 2002, Chapter 110, Section 58 to plan, design, remodel and make improvements and an addition to that building may be expended is extended through fiscal year 2008. Any unexpended balance remaining at the end of fiscal year 2008 shall revert to the educational retirement fund.

Section 53. ROSWELL PRIVATE AIR TERMINAL TARMAC--CHANGE PURPOSE TO ROSWELL AIR TERMINAL TARMAC IN CHAVES COUNTY.--The project authorized in Subsection 26 of Section 19 of Chapter 110 of Laws 2002 to the state highway and transportation department to repair the tarmac at the private air terminal in Roswell in Chaves county is void. The state board of finance may issue and sell severance tax bonds upon certification by the state highway and transportation department that the need exists for the issuance of the bonds in the amount of twenty-five thousand dollars (\$25,000) to the state highway and transportation department to repair the tarmac at the air terminal in Roswell in Chaves county.

Section 54. YOUNG AMERICAN FOOTBALL LEAGUE FACILITY--CHANGE PURPOSE AND AGENCY FOR IMPROVEMENTS AT INTERSTATE 40 INTERCHANGE AT PUEBLO OF ACOMA IN CIBOLA COUNTY.--The proceeds from the sale of severance tax

bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection WWWWWWWWWWWW of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to design and construct a facility to be used to house the young American football league in Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated to the state highway and transportation department for improvements at the interstate 40 interchange at the Pueblo of Acoma exit at or near mile post 102 in Cibola county.

Section 55. PLACITAS COMMUNITY CENTER IMPROVEMENTS--CHANGE AGENCY AND PURPOSE AND EXTEND EXPENDITURE PERIOD FOR ROAD IMPROVEMENTS IN RODEY IN DONA ANA COUNTY.--The balance of the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection YYYY of Section 9 of Chapter 148 of Laws 1994 and reauthorized pursuant to Laws 1996, Chapter 24, Section 1 to continue improvements and renovations to the Placitas community center located in Dona Ana county shall not be expended for the original or amended purpose but is reauthorized and appropriated to the state highway and transportation department for road improvements in Rodey in Dona Ana county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 56. BIG MESA WATER COOPERATIVE IMPROVEMENTS--CHANGE AGENCY AND PURPOSE FOR ROAD IMPROVEMENTS IN CONCHAS LAKE AREA IN SAN MIGUEL COUNTY.--The project authorized in Subsection 81 of Section 15 of Chapter 110 of Laws 2002 to the department of environment for water mains and line improvements for Big Mesa water cooperative in Conchas dam in San Miguel county is void. The state board of finance may issue and sell severance tax bonds upon certification by the state highway and transportation department that the need exists for the issuance of the bonds in the amount of ten thousand dollars (\$10,000) to the state highway and transportation department for

improvements to county roads in the Conchas lake area in San Miguel county.

Section 57. COUNTY ROAD B-30-A IMPROVEMENTS--CHANGE PURPOSE TO COUNTY ROAD B-40 AND B-28-A IN SAN MIGUEL COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the state highway and transportation department pursuant to Subsection 60 of Section 19 of Chapter 110 of Laws 2002 for road improvements to and paving of county road B-30-A in San Miguel county shall not be expended for the original purpose but are reauthorized and appropriated for improvements and paving of county road B-40 and county road B-28-A in San Miguel county.

Section 58. CERRO DEL ALAMO, SUNRISE AND SUNSET ROAD IMPROVEMENTS IN SANTA FE COUNTY--GENERAL FUND APPROPRIATION--EXTEND EXPENDITURE PERIOD.--The period of time in which the general fund appropriation made to the state highway and transportation department pursuant to Subsection AA of Section 41 of Chapter 23 of Laws 2000 (2nd S.S.) for road improvements to Cerro del Alamo and portions of Sunrise and Sunset roads in Santa Fe county may be expended is extended through fiscal year 2008.

Section 59. CERRO DEL ALAMO, SUNRISE AND SUNSET ROAD IMPROVEMENTS IN SANTA FE COUNTY--SEVERANCE TAX BOND APPROPRIATION--EXTEND EXPENDITURE PERIOD.--The period of time in which the severance tax bond appropriation made to the state highway and transportation department pursuant to Subsection SS of Section 12 of Chapter 23 of Laws 2000 (2nd S.S.) for road improvements to Cerro del Alamo and portions of Sunrise and Sunset roads in Santa Fe county may be expended is extended through fiscal year 2008.

Section 60. COUNTY ROAD 85 ROAD IMPROVEMENTS--CHANGE PURPOSE TO DESIGN AND CONSTRUCT IMPROVEMENTS TO CAMINO DE LOS MONTOYAS IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the state highway and transportation department pursuant to

Subsection 75 of Section 19 of Chapter 110 of Laws 2002 to construct new asphalt pavement, striping, drainage and seeding on county road 85, Camino de los Montoyas, between state road 599 and the city line at Vista Chicoma in Santa Fe county shall not be expended for the original purpose but are reauthorized and appropriated to design and construct new asphalt pavement, striping, drainage and seeding on Camino de los Montoyas between state road 599 and the city line at Vista Chicoma in Santa Fe county.

Section 61. SUNRISE ROAD IMPROVEMENTS--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR NANCY'S TRAIL ROAD IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the state highway and transportation department pursuant to Subsection XXX of Section 14 of Chapter 2 of Laws 1999 (1st S.S.) and amended in Laws 2002, Chapter 110, Section 77 to improve Sunrise road in Santa Fe county shall not be expended for the original or amended purpose but are reauthorized and appropriated to pave, improve and replace culverts on Nancy's Trail road in Santa Fe county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 62. HEIGHTS COMMUNITY CENTER IMPROVEMENTS IN ALBUQUERQUE IN BERNALILLO COUNTY--EXPAND PURPOSE TO INCLUDE PLAN AND DESIGN.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 1 of Section 22 of Chapter 110 of Laws 2002 to make improvements to the Heights community center in Albuquerque in Bernalillo county may also be expended to plan and design improvements to the Heights community center.

Section 63. HEIGHTS COMMUNITY CENTER VAN--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD TO IMPROVE AND FURNISH HEIGHTS COMMUNITY CENTER IN ALBUQUERQUE IN BERNALILLO COUNTY.--The balance of the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant

to Subsection 2 of Section 22 of Chapter 110 of Laws 2002 to purchase a van for the Heights community center in Albuquerque in Bernalillo county shall not be expended for the original purpose but is reauthorized and appropriated to improve and furnish the Heights community center in Albuquerque in Bernalillo county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 64. CHILILI MULTIPURPOSE BUILDING IN BERNALILLO COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the severance tax bond appropriation made to the local government division of the department of finance and administration pursuant to Subsection J of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to construct a multipurpose building in Chilili in Bernalillo county may be expended is extended through fiscal year 2008.

Section 65. HISTORIC HUNNING HIGHLAND DISTRICT BUILDING--CHANGE PURPOSE FOR ALBUQUERQUE STATION PROJECT IN BARELAS AND SOUTH BROADWAY NEIGHBORHOODS IN ALBUQUERQUE IN BERNALILLO COUNTY.--The project authorized in Subsection 24 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration to renovate a building in the historic Hunning Highland district in Albuquerque in Bernalillo county is void. The state board of finance may issue and sell severance tax bonds upon certification by the local government division that the need exists for the issuance of the bonds in the amount of fifty thousand dollars (\$50,000) to the local government division for design and engineering related to developing passenger rail service for the Albuquerque station project and an economic development project in the Barelvas and South Broadway neighborhoods of Albuquerque in Bernalillo county.

Section 66. MESA DEL SOL LITTLE LEAGUE FIELD--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR LOBO LITTLE LEAGUE FIELDS IN ALBUQUERQUE IN BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of

finance and administration pursuant to Subsection AAAAAAAA of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design and construct a little league field in the Mesa del Sol area of Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated for improvements at the Lobo little league fields in Albuquerque in Bernalillo county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 67. TWELFTH STREET SIDEWALK REPAIRS--CHANGE PURPOSE FOR SIDEWALK REPAIRS ON DELAMAR STREET IN ALBUQUERQUE IN BERNALILLO COUNTY.--The project authorized in Subsection 47 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration for sidewalk repairs on Twelfth street north of Griegos road in Albuquerque in Bernalillo county is void. The state board of finance may issue and sell severance tax bonds upon certification by the local government division that the need exists for the issuance of the bonds in the amount of thirty thousand dollars (\$30,000) to the local government division for sidewalk repairs on Delamar street just east of Twelfth street in Albuquerque in Bernalillo county.

Section 68. HANDS OF TRANSFORMATION WOMEN IN TRANSITION PROGRAM--CHANGE PURPOSE FOR EQUIPMENT AT THE SAN PEDRO LIBRARY IN ALBUQUERQUE IN BERNALILLO COUNTY.--The project authorized in Subsection 55 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration to purchase and install equipment, furniture and technology for the hands of transformation women in transition program in Bernalillo county is void. The state board of finance may issue and sell severance tax bonds upon certification by the local government division that the need exists for the issuance of the bonds in the amount of ten thousand dollars (\$10,000) to the local government division to purchase and install equipment at the San Pedro library in Albuquerque in Bernalillo county.

Section 69. MILAN OFFICE BUILDING CONSTRUCTION--CHANGE PURPOSE TO REMODEL MILAN OFFICE BUILDING IN CIBOLA COUNTY.--The balance of the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 80 of Section 22 of Chapter 110 of Laws 2002 to plan, design and construct an office building for Milan in Cibola county shall not be expended for the original purpose but is reauthorized and appropriated to remodel an office building in Milan in Cibola county.

Section 70. CARLSBAD REHABILITATION FACILITY--CHANGE PURPOSE TO REMODEL THE DETENTION CENTER IN CARLSBAD IN EDDY COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 125 of Section 22 of Chapter 110 of Laws 2002 to construct a facility to serve the economic, social and medical rehabilitation needs of individuals with severe mental illness in Carlsbad in Eddy county shall not be expended for the original purpose but are reauthorized and appropriated to remodel the detention center in Carlsbad in Eddy county.

Section 71. LOVING MODULAR OFFICE FACILITY--CHANGE PURPOSE TO CONSTRUCT A MUNICIPAL COMPLEX IN LOVING IN EDDY COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the capital program fund pursuant to Subsection 131 of Section 22 of Chapter 110 of Laws 2002 for a modular office facility to serve as a municipal complex in Loving in Eddy county shall not be expended for the original purpose but are reauthorized and appropriated to construct a municipal complex in Loving in Eddy county.

Section 72. GALLUP VETERANS' MEMORIAL--EXPAND PURPOSE TO INCLUDE PLAN AND DESIGN.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 165 of Section 22 of Chapter 110 of Laws 2002 to construct a veterans' memorial for the public arts park in Gallup in

McKinley county may also be expended to plan and design the veterans' memorial in that park.

Section 73. MORA VALLEY DIALYSIS CLINIC--CHANGE PURPOSE FOR EQUIPMENT FOR THE BUENA VISTA VOLUNTEER FIRE DEPARTMENT IN MORA COUNTY.--The project authorized in Subsection 168 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration to plan, design, construct and equip a dialysis clinic for the Mora Valley community health services, incorporated, in Mora county is void. The state board of finance may issue and sell severance tax bonds upon certification by the local government division that the need exists for the issuance of the bonds in the amount of one hundred seventy-five thousand dollars (\$175,000) to the local government division to purchase equipment for the Buena Vista volunteer fire department in Mora county.

Section 74. HERNANDEZ ACEQUIA SIPHONS--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR AN EMERGENCY WELL FOR THE AGUA SANA WATER USERS ASSOCIATION IN HERNANDEZ IN RIO ARRIBA COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection FFFFFFFF of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to purchase and install siphons for acequias near Hernandez in Rio Arriba county shall not be expended for the original purpose but are reauthorized and appropriated for an emergency well for the Agua Sana water users association in Hernandez in Rio Arriba county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 75. ALCOHOL AND SUBSTANCE ABUSE RECOVERY FACILITY IN RIO ARRIBA COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection EEEEEEEE of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design, construct and acquire land for an alcohol and

substance abuse recovery facility in Rio Arriba county may be expended is extended through fiscal year 2008.

Section 76. DIXON MULTIPURPOSE COMMUNITY CENTER--CHANGE PURPOSE FOR A LIBRARY AND COMMUNITY CENTER IN DIXON IN RIO ARRIBA COUNTY.--The project authorized in Subsection 181 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration to plan, design and construct a multipurpose community center in Dixon in Rio Arriba county is void. The state board of finance may issue and sell severance tax bonds upon certification by the local government division that the need exists for the issuance of the bonds in the amount of fifty thousand dollars (\$50,000) to the local government division to renovate, furnish and equip a library and community center in Dixon in Rio Arriba county.

Section 77. UNION STREET SEWER LINE--CHANGE AGENCY AND PURPOSE FOR A VETERANS' FACILITY IN LAS VEGAS IN SAN MIGUEL COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the department of environment pursuant to Subsection 30 of Section 15 of Chapter 110 of Laws 2002 to improve the sewer line on Union street in Las Vegas in San Miguel county shall not be expended for the original purpose but are reauthorized and appropriated to the local government division of the department of finance and administration to plan and design a facility for the veterans' center in Las Vegas in San Miguel county.

Section 78. DEE BIBBS INDUSTRIAL PARK BUILDINGS--CHANGE PURPOSE FOR DOWNTOWN REVITALIZATION PROJECT IN LAS VEGAS IN SAN MIGUEL COUNTY.--The general fund appropriation made to the local government division of the department of finance and administration pursuant to Subsection CCCC of Section 44 of Chapter 23 of Laws 2000 (2nd S.S.) to make improvements to Dee Bibbs industrial park buildings in Las Vegas in San Miguel county shall not be expended for the original purpose but is appropriated for the downtown revitalization project, including planning, designing and constructing a new city hall, in Las Vegas in San Miguel county.

**Section 79. MOBILE HEALTH CARE VAN IN SANTA FE COUNTY--
EXPAND PURPOSE AND EXTEND EXPENDITURE PERIOD TO
EQUIP VAN.--**The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 213 of Section 22 of Chapter 110 of Laws 2002 to purchase a mobile health care van in Santa Fe county may also be expended to equip the van. The period of time in which this appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

**Section 80. EDGEWOOD MUNICIPAL BUILDING IN SANTA FE
COUNTY--EXPAND PURPOSE AND EXTEND EXPENDITURE
PERIOD TO INCLUDE ACQUISITION.--**The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection AAAAAAA of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design, build infrastructure and construct a municipal building in Edgewood in Santa Fe county may also be expended to acquire a municipal building in Edgewood in Santa Fe county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

**Section 81. MOBILE HEALTH CARE VAN IN SANTA FE COUNTY--
EXPAND PURPOSE AND EXTEND EXPENDITURE PERIOD TO
EQUIP VAN.--**The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 220 of Section 22 of Chapter 110 of Laws 2002 to purchase a mobile health care van in Santa Fe county may also be expended to equip the van. The period of time in which this appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

**Section 82. MOVIMIENTO ASCENDENCIA TEEN CENTER
DEVELOPMENT AND WATER AND SEWER INSTALLATION--
EXTEND EXPENDITURE PERIOD.--**The period of time in which the

severance tax bond appropriation made to the local government division of the department of finance and administration pursuant to Subsection GGGGGGG of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) for phase 2 development and water and sewer system installation to establish the Movimiento Ascendencia teen center in the northern sector of Santa Fe county may be expended is extended through fiscal year 2004. Any unexpended balance remaining at the end of fiscal year 2004 shall revert to the severance tax bonding fund.

Section 83. MOBILE HEALTH CARE VAN IN SANTA FE COUNTY--EXPAND PURPOSE AND EXTEND EXPENDITURE PERIOD TO EQUIP VAN.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 218 of Section 22 of Chapter 110 of Laws 2002 to purchase a mobile health care van in Santa Fe county may also be expended to equip the van. The period of time in which this appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 84. PENASCO SUBSTATION LAND--EXPAND PURPOSE AND EXTEND EXPENDITURE PERIOD FOR PUBLIC WORKS DEPARTMENT SUBSTATION IN PENASCO IN TAOS COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection HHHHHH of Section 11 of Chapter 118 of Laws 1998 to acquire land for a substation in Penasco in Taos county may also be expended to plan, design, construct and equip a public works department substation in Penasco in Taos county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 85. PENASCO PUBLIC WORKS SUBSTATION--EXPAND PURPOSE AND EXTEND THE EXPENDITURE PERIOD TO ACQUIRE LAND FOR THE SUBSTATION IN PENASCO IN TAOS COUNTY.--The proceeds from the sale of severance tax bonds appropriated to

the local government division of the department of finance and administration pursuant to Subsection GGGGG of Section 11 of Chapter 118 of Laws 1998 to plan, design, construct and equip a public works department substation in Penasco in Taos county may also be expended to acquire land for a public works department substation in Penasco in Taos county. The period of time in which the appropriation may be expended is extended through fiscal year 2008.

Section 86. BOSQUE FARMS LIBRARY ADDITION--CHANGE PURPOSE FOR A FIRE AND POLICE STATION IN BOSQUE FARMS IN VALENCIA COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 526 of Section 22 of Chapter 110 of Laws 2002 to construct an addition for children and youth at the library in Bosque Farms in Valencia county shall not be expended for the original purpose but are reauthorized and appropriated to construct a fire and police station in Bosque Farms in Valencia county.

Section 87. HUNNING HIGHLAND BUILDING--CHANGE AGENCY AND PURPOSE TO RENOVATE THE WITTLESEY HOUSE IN ALBUQUERQUE IN BERNALILLO COUNTY.--The project authorized in Subsection 3 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration to renovate a building in the Hunning Highland district in Albuquerque in Bernalillo county is void. The state board of finance may issue and sell severance tax bonds upon certification of the historic preservation division of the office of cultural affairs that the need exists for the issuance of bonds in the amount of one hundred thousand dollars (\$100,000) to renovate and preserve the Wittlesey house in Albuquerque in Bernalillo county. Certification of the division is contingent on the site being listed in the state register of cultural properties and title being vested in the state as provided in the New Mexico Prehistoric and Historic Sites Preservation Act.

Section 88. CANONCITO YOUTH CENTER IN BERNALILLO COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in

which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection AA of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to renovate, equip and furnish the youth center in Canoncito in Bernalillo county may be expended is extended through fiscal year 2008.

Section 89. RAMAH NAVAJO CHAPTER HOUSE WIRING AND SERVICE LINE EXTENSIONS IN CIBOLA COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection LL of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) for house wiring and service line extensions, including hook-ups to sixty-eight residences, in the Ramah Navajo chapter in Cibola county may be expended is extended through fiscal year 2008.

Section 90. PUEBLO OF ZUNI VISITORS' CENTER IN MCKINLEY COUNTY--EXPAND PURPOSE TO INCLUDE PLAN, DESIGN AND SITE PREPARATION.--The proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection 3 of Section 20 of Chapter 110 of Laws 2002 to construct a visitors' center to serve as a visitor education and referral point at the Pueblo of Zuni in McKinley county may also be expended to plan, design and prepare the site for the visitors' center.

Section 91. TOHATCHI MULTIPURPOSE FACILITY--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR POWERLINE EXTENSIONS AND A FITNESS ROOM IN TOHATCHI IN MCKINLEY COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection JJ of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to plan and design a new multipurpose facility in Tohatchi in McKinley county shall not be expended for the original purpose but are reauthorized and appropriated to plan, design and construct powerline extensions in the chapter and a fitness room at the Tohatchi chapter house in Tohatchi in McKinley county. The period

of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 92. BOWL CANYON SWIMMING POOL--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR CAMP ASAAYI AT BOWL CANYON IN MCKINLEY COUNTY.--The balance of the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection E of Section 16 of Chapter 367 of Laws 1993 and reauthorized in Laws 1996, Chapter 14, Section 32 for the purpose of planning, designing or constructing a swimming pool at Bowl Canyon recreational area in McKinley county shall not be expended for the original or reauthorized purpose but is reauthorized and appropriated to improve Camp Asaayi at Bowl Canyon. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 93. RED LAKE CHAPTER AREA BUILDING, UTILITIES AND SEWER LAGOON IN MCKINLEY COUNTY--CHANGE PURPOSE FOR A STEEL OFFICE BUILDING COMPLEX.--The general fund appropriation to the New Mexico office of Indian affairs pursuant to Subsection B of Section 42 of Chapter 23 of Laws 2000 (2nd S.S.) to purchase and install a modular building, renovate a building, install fencing, extend and connect water and sewer lines and improve the sewer lagoon in the Red Lake chapter area of McKinley county shall not be expended for these purposes but is appropriated to plan, design and construct a steel office building complex, including utility connections, fencing and site preparation in the Red Lake chapter area of McKinley county.

Section 94. RED LAKE CHAPTER MODULAR IN MCKINLEY COUNTY--CHANGE PURPOSE FOR A STEEL OFFICE BUILDING COMPLEX.--The proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection 13 of Section 20 of Chapter 110 of Laws 2002 to purchase and install a modular building, including extension and installation of utilities at the building site, for the Red Lake community of the Navajo Nation in McKinley county shall not be expended for the original purpose but are reauthorized and

appropriated to plan, design and construct a steel office building complex, including utility connections, fencing and site preparation.

Section 95. PUEBLO PINTADO BATHROOM ADDITIONS MATERIALS IN MCKINLEY COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection N of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to purchase materials for bathroom additions for homes in the Pueblo Pintado community in McKinley county may be expended is extended through fiscal year 2008.

Section 96. PUEBLO PINTADO BATHROOM ADDITIONS MATERIALS IN MCKINLEY COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection DD of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to purchase materials for bathroom additions for homes in Pueblo Pintado in McKinley county may be expended is extended through fiscal year 2008.

Section 97. BACA CHAPTER MULTIPURPOSE CENTER IN MCKINLEY COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection FF of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to remodel and improve the multipurpose center at the Baca chapter in McKinley county may be expended is extended through fiscal year 2008.

Section 98. WHITE ROCK CHAPTER HOUSE RENOVATIONS AND EQUIPMENT--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection II of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to renovate the kitchen, bathrooms, replace the heating system and purchase equipment for the White Rock chapter house in

Crownpoint in McKinley county may be expended is extended through fiscal year 2008.

Section 99. WHITE ROCK CHAPTER HOUSE RENOVATIONS AND EQUIPMENT--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD TO CONDUCT A FEASIBILITY STUDY AND ACQUIRE REAL PROPERTY FOR THE NAVAJO NATION.--The proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection II of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to renovate the kitchen, bathrooms, replace the heating system and purchase equipment for the White Rock chapter house in Crownpoint in McKinley county shall not be expended for the original purpose but are reauthorized and appropriated to conduct a feasibility study for economic development opportunities on the Navajo Nation and to acquire real property. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 100. STARLAKE AREA CHILD DEVELOPMENT CENTER--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection EE of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design and prepare a site for a child development center in the Starlake area to serve five chapters in Cibola and Sandoval counties may be expended is extended through fiscal year 2008.

Section 101. SHIPROCK BOYS' AND GIRLS' CLUB RENOVATE--CHANGE AGENCY AND PURPOSE AND EXTEND EXPENDITURE PERIOD FOR AN ADDITION AT THE SHIPROCK BOYS' AND GIRLS' CLUB IN SAN JUAN COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection VVVVV of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to renovate and improve the facility housing at the Shiprock boys' and girls' club in San Juan county shall not be expended for the original purpose but are reauthorized and appropriated to the New Mexico office of Indian affairs for an addition at the boys' and girls' club of the Navajo Nation in Shiprock in San Juan county. The

period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 102. SHIPROCK BEHAVIORAL HEALTH SERVICES CENTER IN SAN JUAN COUNTY--EXTEND EXPENDITURE PERIOD.-

-The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection S of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to renovate and improve the old Indian health services building for a new behavioral health services center in Shiprock in San Juan county may be expended is extended through fiscal year 2008.

Section 103. SHEEP SPRINGS TOURISM FACILITY IN SAN JUAN COUNTY--EXTEND EXPENDITURE PERIOD.--

The period of time in which the severance tax bond appropriation made to the New Mexico office of Indian affairs pursuant to Subsection HH of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to construct a tourism facility in Sheep Springs in San Juan county may be expended is extended through fiscal year 2008.

Section 104. NAGEEZI PRESCHOOL--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR POWERLINE EXTENSIONS AT THE NAGEEZI CHAPTER IN SAN JUAN COUNTY.--

The proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection FF of Section 18 of Chapter 118 of Laws 1998 to plan, design and construct a preschool in Nageezi in San Juan county, provided that the certification and issuance of bonds is contingent upon the Navajo Nation providing an equal or greater match for this project from sources other than the state, shall not be expended for the original purpose but are reauthorized and appropriated to extend a powerline at the Nageezi chapter of the Navajo Nation in San Juan county. The period of time in which the appropriation may be expended is extended through fiscal year 2008.

Section 105. HUERFANO MULTIPURPOSE CENTER IN SAN JUAN COUNTY--EXTEND EXPENDITURE PERIOD.--

The period of time in which the proceeds from the sale of severance tax bonds

appropriated to the New Mexico office of Indian affairs pursuant to Subsection F of Section 28 of Chapter 222 of Laws 1995 and amended in Subsection O of Section 72 of Chapter 118 of Laws 1998 for designing, preconstructing, constructing, furnishing or equipping phase 1 of a multipurpose center in Huerfano in San Juan county may be expended is extended through fiscal year 2008.

Section 106. HUERFANO MULTIPURPOSE CENTER IN SAN JUAN COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection O of Section 16 of Chapter 148 of Laws 1994 and amended in Paragraph (3) of Subsection B of Section 72 of Chapter 118 of Laws 1998 to plan, design and construct a multipurpose center in the community of Huerfano located in San Juan county may be expended is extended through fiscal year 2008.

Section 107. TESUQUE PUEBLO DAY SCHOOL IN SANTA FE COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection W of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design and construct a day school at Tesuque Pueblo in Santa Fe county may be expended is extended through fiscal year 2008.

Section 108. OLD TOWN YOUTH RECREATIONAL FACILITY--CHANGE AGENCY AND PURPOSE AND EXTEND EXPENDITURE PERIOD FOR THE AMY BIEHL CHARTER HIGH SCHOOL FACILITY.-
-The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection RRRRRRR of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to renovate and make improvements to a recreational facility for youth in old town in Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated to the state department of public education to construct, equip and purchase or renovate a facility for the Amy Biehl charter high school in the

Albuquerque public school district in Bernalillo county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 109. GRIEGOS ELEMENTARY SCHOOL MULTIPURPOSE FACILITY IN BERNALILLO COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which severance tax bond proceeds appropriated to the state department of public education pursuant to Subsection DD of Section 19 of Chapter 118 of Laws 1998 for the plan, design, construction and equipping of an addition to the multipurpose facility for Griegos elementary school in Bernalillo county may be expended is extended through fiscal year 2008.

Section 110. VALLEY HIGH SCHOOL STORAGE UNIT IN ALBUQUERQUE IN BERNALILLO COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which severance tax bond proceeds appropriated to the state department of public education pursuant to Subsection F of Section 19 of Chapter 118 of Laws 1998 for a football equipment storage unit at Valley high school in Albuquerque in Bernalillo county may be expended is extended through fiscal year 2008.

Section 111. KANW PUBLIC RADIO STATION EQUIPMENT IN ALBUQUERQUE IN BERNALILLO COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which severance tax bond proceeds appropriated to the state department of public education pursuant to Subsection GGGGGGGG of Section 19 of Chapter 2 of Laws 1999 (1st S.S.) to replace public radio station equipment for KANW educational radio and the main transmitter in Albuquerque in Bernalillo county may be expended is extended through fiscal year 2008.

Section 112. VALLEY HIGH SCHOOL ATHLETIC FACILITY IMPROVEMENTS IN ALBUQUERQUE IN BERNALILLO COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which severance tax bond proceeds appropriated to the state department of public education pursuant to Subsection HHHHHHHH of Section 19 of Chapter 2 of Laws 1999 (1st S.S.) to renovate the shower area and locker rooms, purchase new lockers and expand athletic and

office areas at Valley high school in Albuquerque in Bernalillo county may be expended is extended through fiscal year 2008.

Section 113. ALAMOGORDO HIGH SCHOOL TENNIS COURTS--CHANGE PURPOSE TO REPAIR TENNIS COURTS AT CHAPARRAL MIDDLE SCHOOL IN THE ALAMOGORDO PUBLIC SCHOOL DISTRICT IN OTERO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection 163 of Section 23 of Chapter 110 of Laws 2002 to build tennis courts at Alamogordo high school in the Alamogordo public school district in Otero county shall not be expended for the original purpose but are reauthorized and appropriated to repair the tennis courts at Chaparral middle school in that school district.

Section 114. ESPANOLA PUBLIC SCHOOL DISTRICT ACTIVITY BUS IN RIO ARRIBA COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection 165 of Section 23 of Chapter 110 of Laws 2002 to purchase an activity bus for the Espanola public school district in Rio Arriba county may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 115. ESPANOLA PUBLIC SCHOOL DISTRICT ACTIVITY BUS IN RIO ARRIBA COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection 166 of Section 23 of Chapter 110 of Laws 2002 to purchase an activity bus for the Espanola public school district in Rio Arriba county may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 116. EL VALLE COMMUNITY CENTER IMPROVEMENTS--CHANGE PURPOSE FOR ELECTRICAL UPGRADES IN THE WEST

LAS VEGAS PUBLIC SCHOOL DISTRICT IN SAN MIGUEL COUNTY.-

-The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 201 of Section 22 of Chapter 110 of Laws 2002 for improvements, including wiring, roof repairs, fencing and landscaping, at El Valle community center in San Miguel county shall not be expended for the original purpose but are reauthorized and appropriated to the state department of public education for electrical upgrades in buildings in the West Las Vegas public school district in San Miguel county.

Section 117. SOUTHERN NEW MEXICO FAIRGROUNDS IN DONA ANA COUNTY--EXTEND EXPENDITURE PERIOD.--

The period of time in which the proceeds from the sale of severance tax bonds appropriated to the state fair commission pursuant to Subsection SSSSSSSSSS of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) for improvements to the southern New Mexico fairgrounds in Dona Ana county may be expended is extended through fiscal year 2008.

Section 118. TWIN LAKES SENIOR CITIZEN CENTER IN MCKINLEY COUNTY--EXTEND EXPENDITURE PERIOD.--

The period of time in which the proceeds from the sale of severance tax bonds appropriated to the state agency on aging pursuant to Subsection P of Section 2 of Chapter 118 of Laws 1998 to plan, design, construct and equip a senior citizen center in Twin Lakes in McKinley county may be expended is extended through fiscal year 2008.

Section 119. NEWCOMB SENIOR CENTER--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR NEWCOMB CHAPTER SENIOR CENTER GARAGE AND FENCE IN SAN JUAN COUNTY.--

The balance of the proceeds from the sale of severance tax bonds appropriated to the state agency on aging pursuant to Subsection P of Section 4 of Chapter 23 of Laws 2000 (2nd S.S.) to plan, design and construct a senior center in Newcomb in San Juan county shall not be expended for the original purpose but is reauthorized and appropriated to construct a garage and to fence the senior center at the Newcomb chapter of the Navajo Nation in San Juan county. The

period of time in which the appropriation may be expended is extended through fiscal year 2008.

Section 120. INDIAN PUEBLO CULTURAL CENTER--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR THE METROPOLITAN COURTHOUSE IN BERNALILLO COUNTY.--The balance of the general fund appropriation to the New Mexico office of Indian affairs pursuant to Laws 1999 (1st S.S.), Chapter 2, Section 104 to plan, design and construct additional facilities at the Indian pueblo cultural center in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the Bernalillo county metropolitan court to furnish and equip the new metropolitan courthouse in Bernalillo county. The period of time in which this appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the general fund.

Section 121. MOUNTAIN VIEW ELEMENTARY SCHOOL--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR THE METROPOLITAN COURTHOUSE IN BERNALILLO COUNTY.--The balance of proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection T of Section 19 of Chapter 2 of Laws 1999 (1st S.S.) for educational technology at Mountain View elementary school in Albuquerque in Bernalillo county shall not be expended for the original purpose but is reauthorized and appropriated to the Bernalillo county metropolitan court for the purpose of furnishing and equipping the new metropolitan courthouse in Bernalillo county. The period of time in which this appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 122. SEQUOYAH ADOLESCENT TREATMENT CENTER--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR SEQUOYAH ADOLESCENT TREATMENT CENTER FIRE ALARM SYSTEM IN ALBUQUERQUE IN BERNALILLO COUNTY.--The balance of the proceeds from the sale of severance tax bonds appropriated to the capital program fund pursuant to Subsection B

of Section 5 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design, construct, furnish and equip a special management unit at the Sequoyah adolescent treatment center in Albuquerque in Bernalillo county shall not be expended for the original purpose but is reauthorized and appropriated to plan, design and install a fire alarm system at the Sequoyah adolescent treatment center in Albuquerque in Bernalillo county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 123. NEW MEXICO BOYS' SCHOOL ALLEN DAM AND IRRIGATION SYSTEM IN COLFAX COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the balance of the New Mexico irrigation works construction fund appropriation to the capital program fund made pursuant to Laws 1999 (1st S.S.), Chapter 2, Section 30 and amended in Laws 2002, Chapter 99, Section 5 to renovate and make improvements to Allen dam and repair and improve the irrigation system associated with the dam at the New Mexico boys' school in Colfax county may be expended is extended through fiscal year 2008.

Section 124. CORRECTIONAL FACILITIES PROJECTS STATEWIDE--EXTEND EXPENDITURE PERIOD.--The period of time in which the balance of the proceeds from the sale of severance tax bonds appropriated to the capital program fund pursuant to Laws 1999 (1st S.S.), Chapter 2, Section 5 in the following subsections for the following purposes may be expended is extended through fiscal year 2008:

A. to demolish and make selective improvements to secure facilities located throughout the state, including the main penitentiary facility located in Santa Fe county, pursuant to Subsection C of that section;

B. to renovate and make improvements to the central minimum unit located in Valencia county, pursuant to Subsection F of that section;

C. to renovate and make improvements to the water, mechanical and security systems at the western New Mexico correctional facility in Cibola county, pursuant to Subsection G of that section; and

D. to renovate and make improvements to the locks and lock controls at the central New Mexico correctional facility in Valencia county, pursuant to Subsection H of that section.

Section 125. STATE FACILITIES IMPROVEMENTS STATEWIDE--EXTEND EXPENDITURE PERIOD.--The period of time in which the balance of the appropriation made from the public buildings repair fund to the capital program fund pursuant to Subsection A of Section 31 of Chapter 2 of Laws 1999 (1st S.S.) in the following paragraphs may be expended is extended through fiscal year 2008:

A. to renovate and make improvements to state facilities located throughout the state, pursuant to Paragraph (1) of that subsection;

B. to plan, design and install a fire alarm system at the central New Mexico correctional facility in Valencia county, pursuant to Paragraph (2) of that subsection;

C. to renovate and make infrastructure improvements at the southern New Mexico correctional facility in Dona Ana county, pursuant to Paragraph (3) of that subsection; and

D. to renovate, make improvements to and equip the Roswell correctional center in Chaves county, pursuant to Paragraph (4) of that subsection.

Section 126. STATE FACILITIES IMPROVEMENTS PROJECTS STATEWIDE--CHANGE PURPOSE.--The balance of the proceeds from the sale of severance tax bonds appropriated to the capital program fund pursuant to Laws 1999 (1st S.S.), Chapter 2, Section 5 in the following subsections for the following purposes shall not be expended for the original purposes but is reauthorized and appropriated to the capital program fund to renovate, repair, improve, furnish and equip state buildings throughout the state as follows:

A. to renovate, make improvements and equip various facilities at the New Mexico boys' school in Colfax county, pursuant to Subsection E of that section; and

B. to purchase and improve, equip and furnish buildings and land and pave a parking lot for the regional office of the oil conservation division in Lea county, pursuant to Subsection J of that section.

**Section 127. STATE FACILITIES IMPROVEMENTS STATEWIDE--
EXPAND PURPOSE AND EXTEND EXPENDITURE PERIOD.--**

A. The balance of the proceeds from the sale of severance tax bonds appropriated to the capital program fund pursuant to Subsection K of Section 5 of Chapter 2 of Laws 1999 (1st S.S.) for the west capitol office building in Santa Fe in Santa Fe county may also be expended in the following amounts for the following purposes:

(1) four hundred thousand dollars (\$400,000) to plan, design and construct high-security recreational pens and areas for non-contact visitation for the corrections department;

(2) five hundred thousand dollars (\$500,000) to complete construction, furnish and equip the Villagra building in Santa Fe county; and

(3) fifty thousand dollars (\$50,000) to renovate, repair, make improvements, furnish and equip state buildings throughout the state.

B. The period of time in which these appropriations may be expended is extended through fiscal year 2008.

**Section 128. CUMBRES AND TOLTEC SCENIC RAILROAD
COMMISSION IN RIO ARRIBA COUNTY--CHANGE PURPOSE TO
REMOVE MATCH REQUIREMENT.--**The balance of the proceeds from the sale of severance tax bonds appropriated to the Cumbres and Toltec scenic railroad commission pursuant to Laws 2002, Chapter 110, Section 9 for capital improvements, including locomotive boiler work, heat and lighting for the shop area and track upgrade, in Rio Arriba county, contingent upon an equal match of appropriations and grants from the state of Colorado, shall be expended for the original purpose but is not contingent upon a match from the state of Colorado.

**Section 129. NORTH VALLEY SEWER COLLECTION AND
TREATMENT PROJECTS CONSTRUCTION--EXPAND PURPOSE
AND EXTEND EXPENDITURE PERIOD FOR NORTH VALLEY
SEWER LINES IN BERNALILLO COUNTY.--**The balance of the proceeds from the sale of severance tax bonds appropriated to the department of environment pursuant to Subsection B of Section 9 of Chapter 118 of Laws 1998 to continue construction of sewer projects in the north valley area of Bernalillo county, with the

certification and issuance of bonds being contingent on the city of Albuquerque, Bernalillo county and the village of Los Ranchos de Albuquerque entering into an agreement regarding planning, designing and constructing sewer collection and treatment facilities in the north valley area of Bernalillo county, may also be expended to continue planning and design of sewer lines in the north valley area of Bernalillo county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 130. KINNEYBRICK SANITARY SEWER LINE--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR NORTH VALLEY SEWER LINES IN BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the department of environment pursuant to Subsection EE of Section 9 of Chapter 118 of Laws 1998 to construct the Kinneybrick sanitary sewer line in Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated to continue planning, design and construction of sewer lines in the north valley area of Bernalillo county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 131. SAN MIGUEL CLINIC--CHANGE PURPOSE AND AGENCY AND EXTEND EXPENDITURE PERIOD FOR WATER AND WASTEWATER IMPROVEMENTS IN DONA ANA COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the department of health pursuant to Subsection C of Section 13 of Chapter 2 of Laws 1999 (1st S.S.) for capital improvements at the San Miguel clinic in Dona Ana county shall not be expended for the original purpose but are reauthorized and appropriated to the department of environment for water and wastewater improvements in Dona Ana county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 132. SAN MIGUEL LA CLINICA DE FAMILIA--CHANGE PURPOSE AND AGENCY FOR WATER AND WASTEWATER IMPROVEMENTS IN DONA ANA COUNTY.--The project authorized

in Subsection 5 of Section 18 of Chapter 110 of Laws 2002 to the department of health to acquire land for, plan, design, construct, equip and furnish a new facility for the San Miguel la clinica de familia in Dona Ana county is void. The state board of finance may issue and sell severance tax bonds upon certification by the department of environment that the need exists for the issuance of the bonds in the amount of fifty thousand dollars (\$50,000) to the department of environment for water and wastewater improvements in Dona Ana county.

Section 133. SAN PABLO MUTUAL DOMESTIC WATER ASSOCIATION WASTEWATER COLLECTION SYSTEM--CHANGE PURPOSE FOR IMPROVEMENTS TO THE WASTEWATER SYSTEM IN SAN PABLO IN DONA ANA COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the department of environment pursuant to Subsection 62 of Section 15 of Chapter 110 of Laws 2002 to construct a wastewater collection system for the San Pablo mutual domestic water association in Dona Ana county shall not be expended for the original purpose but are reauthorized and appropriated to construct water and wastewater improvements to the wastewater system in San Pablo in Dona Ana county.

Section 134. TABLE TOP WATER USERS ASSOCIATION--EXTEND EXPENDITURE PERIOD.--The period of time in which the severance tax bond appropriation made to the department of environment pursuant to Subsection GG of Section 10 of Chapter 2 of Laws 1999 (1st S.S.) to construct a water delivery system for the Table Top water users association in Santa Rosa in Guadalupe county may be expended is extended through fiscal year 2008.

Section 135. LOS ALAMOS COUNTY VISITOR AND INTERPRETIVE CENTER--CHANGE PURPOSE AND AGENCY FOR THE BAYO WASTEWATER TREATMENT PLANT IN LOS ALAMOS COUNTY.-- The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 428 of Section 22 of Chapter 110 of Laws 2002 to plan, design, construct, equip and furnish a visitor and interpretive center to be built on lands owned by Los

Alamos county shall not be expended for the original purpose but are reauthorized and appropriated to the department of environment to build a new Bayo wastewater treatment plant, demolish the old facility and restore the old site in Los Alamos county.

Section 136. SANTA FE CITY WATER SYSTEM EXTENSION--CHANGE PURPOSE AND AGENCY AND EXTEND EXPENDITURE PERIOD FOR THE SANTA FE WATER SYSTEM EXTENSION TO CAMINO CARLOS RAEL IN SANTA FE COUNTY.--The balance of the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection RRRRRR of Section 9 of Chapter 7 of Laws 1998 to plan, design and construct a project to extend the Santa Fe city water system to Camino Carlos Rael, Alamo drive and Montoya land in Santa Fe county shall not be expended for the original purpose but is reauthorized and appropriated to the department of environment to plan, design and construct a project, including paving and making other necessary improvements, to extend the city of Santa Fe water system to Camino Carlos Rael in Santa Fe county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 137. RIO GRANDE WATER USERS' SUSTAINABLE WATER PROJECT--CHANGE PURPOSE AND AGENCY FOR THE ELEPHANT BUTTE NORTH AREA WASTEWATER FACILITY IN SIERRA COUNTY.--The project authorized in Subsection 400 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration for an engineering feasibility study for the lower Rio Grande water users' organization sustainable water project in Dona Ana county is void. The state board of finance may issue and sell severance tax bonds upon certification by the department of environment that the need exists for the issuance of the bonds in the amount of one thousand dollars (\$1,000) to the department of environment to purchase land and make infrastructure improvements for the Elephant Butte north area wastewater facility in Sierra county.

Section 138. SANTA TERESA PORT OF ENTRY PLATFORM STATIC SCALE--EXPAND THE PURPOSE FOR A BUILDING FOR THE BORDER AUTHORITY AT THE SANTA TERESA BORDER CROSSING IN DONA ANA COUNTY.--The appropriation made from the capital projects fund to the department of public safety pursuant to Subsection 1 of Section 52 of Chapter 110 of Laws 2002 to complete phase 2 construction and equip and install a platform static scale at the Santa Teresa port of entry in Dona Ana county may also be expended to design, construct, equip and furnish a building for the border authority at the Santa Teresa border crossing in Dona Ana county, subject to the approval of the secretary of public safety.

Section 139. EAGLE NEST LAKE PARK IMPROVEMENTS--CHANGE PURPOSE FOR EAGLE NEST LAKE IMPROVEMENTS, VEHICLES AND EQUIPMENT IN COLFAX COUNTY.--The capital projects fund appropriation to the energy, minerals and natural resources department pursuant to Subsection 2 of Section 41 of Chapter 110 of Laws 2002 to make improvements at Eagle Nest Lake park in Colfax county shall not be expended for the original purpose but is appropriated for improvements and the purchase of equipment and vehicles for Eagle Nest Lake park in Colfax county.

Section 140. NIZHONI BOULEVARD EXTENSION PROJECT IN GALLUP IN MCKINLEY COUNTY--EXPAND PURPOSE TO PLAN, DESIGN AND ACQUIRE A RIGHT OF WAY.--The proceeds from the sale of severance tax bonds appropriated to the state highway and transportation department pursuant to Subsection 110 of Section 19 of Chapter 110 of Laws 2002 for continued construction of the Nizhoni boulevard extension project in Gallup in McKinley county may also be expended to plan, design and acquire a right of way for the Nizhoni boulevard extension project in Gallup in McKinley county.

Section 141. ROADWAY BETWEEN PANORAMA AND DESERT LAKES ROAD--CHANGE PURPOSE TO DESIGN THAT ROADWAY.--The general fund appropriation made to the state highway and transportation department pursuant to Subsection LL of Section 41 of Chapter 23 of Laws 2000 (2nd S.S.) to repair and construct the

roadway between Panorama and Desert Lakes road in Otero county shall not be expended for the original purpose but is appropriated to design that roadway.

Section 142. RIBERA BASEBALL FIELDS--CHANGE PURPOSE AND AGENCY FOR THE SAN JOSE BRIDGE AND ROAD IMPROVEMENTS IN SAN JOSE IN SAN MIGUEL COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection MMMMMMMMM of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to improve the Ribera baseball fields in San Miguel county shall not be expended for the original purpose but are reauthorized and appropriated to the state highway and transportation department to continue construction of the San Jose bridge replacement and road improvement project, also known as county road B-41-D, in San Jose in San Miguel county.

Section 143. ROCKY ROAD IN PECOS--CHANGE PURPOSE TO SAN JUAN DEL RIO ROAD IN PECOS IN SAN MIGUEL COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the state highway and transportation department pursuant to Subsection 132 of Section 19 of Chapter 110 of Laws 2002 to pave Rocky road in Pecos in San Miguel county shall not be expended for the original purpose but are reauthorized and appropriated to improve San Juan del Rio road in Pecos in San Miguel county.

Section 144. DEE BIBBS INDUSTRIAL PARK BUILDINGS--CHANGE PURPOSE AND AGENCY TO COUNTY ROAD B-30-A IN GONZALES RANCH IN SAN MIGUEL COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection QQQQQQQQQ of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to improve Dee Bibbs industrial park buildings in Las Vegas in San Miguel county shall not be expended for the original purpose but are reauthorized and appropriated to the state highway and transportation department to improve county road B-30-A in Gonzales Ranch in San Miguel county.

Section 145. DEE BIBBS INDUSTRIAL PARK BUILDINGS--CHANGE PURPOSE AND AGENCY FOR COUNTY ROAD B-30-A IN GONZALES RANCH IN SAN MIGUEL COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection WWWWWWWWW of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to improve Dee Bibbs industrial park buildings in Las Vegas in San Miguel county shall not be expended for the original purpose but are reauthorized and appropriated to the state highway and transportation department to improve county road B-30-A in Gonzales Ranch in San Miguel county.

Section 146. CORRALES SKATE PARK--CHANGE PURPOSE FOR BASKETBALL COURTS IN CORRALES IN SANDOVAL AND BERNALILLO COUNTIES.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 441 of Section 22 of Chapter 110 of Laws 2002 to construct a skate park in Corrales in Sandoval and Bernalillo counties shall not be expended for the original purpose but are reauthorized and appropriated for repairing and constructing indoor and outdoor basketball courts in Corrales.

Section 147. LOS PADILLAS PUBLIC POOL--EXTEND THE EXPENDITURE PERIOD.--The period of time in which severance tax bond proceeds appropriated to the local government division of the department of finance and administration pursuant to Subsection I of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design and construct a public pool in the Los Padillas area of Bernalillo county may be expended is extended through fiscal year 2008.

Section 148. NATIONAL ATOMIC MUSEUM--CHANGE PURPOSE FOR DESIGN AND DEVELOPMENT IMPROVEMENTS AT THE NATIONAL ATOMIC MUSEUM IN ALBUQUERQUE IN BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 271 of Section 22 of Chapter 110 of Laws 2002 to make improvements, including

landscaping, upgrading the storm drainage and parking lot and relocating the national atomic museum from Kirtland air force base to Balloon Fiesta park in Albuquerque in Bernalillo county, shall not be expended for the original purpose but are reauthorized and appropriated for grading, stabilization, sidewalks, parking lots and other infrastructure design and development at the national atomic museum in Albuquerque in Bernalillo county.

Section 149. LEARNING ROAD EXTENSION--CHANGE PURPOSE AND AGENCY FOR TRAIL IMPROVEMENTS ON THE I-40 TRAIL IN ALBUQUERQUE IN BERNALILLO COUNTY.--The balance of the general fund appropriation made to the state highway and transportation department in Subsection VV of Section 41 of Chapter 23 of Laws 2000 (2nd S.S.) to plan, design and construct an extension to Learning road, including bicycle trails and landscaping, beginning at the intersection with Coors boulevard and east along Learning road and related areas in the north valley of Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the local government division of the department of finance and administration for trail improvements on the I-40 trail between Sixth street and the Rio Grande in Albuquerque in Bernalillo county.

Section 150. WEST OLD TOWN NEIGHBORHOOD PARK--EXPAND PURPOSE TO INCLUDE CONSTRUCTION.--The balance of the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection JJJJJJJJ of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to design a community park in the west old town neighborhood of Albuquerque in Bernalillo county may also be expended to construct a community park in the west old town neighborhood of Albuquerque in Bernalillo county.

Section 151. COMMUNITY CENTER IN THE MISSION AVENUE ELEMENTARY SCHOOL AREA--CHANGE PURPOSE FOR IMPROVEMENTS TO GRIEGOS AND COMANCHE ROADS IN BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection

HH of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design and construct a community center in the Mission avenue elementary school area of the north valley of Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated for landscaping and streetscaping improvements to Griegos and Comanche roads between the Santa Fe railroad tracks and interstate 25 in Bernalillo county.

Section 152. NATIONAL ATOMIC MUSEUM--CHANGE PURPOSE FOR DESIGN AND DEVELOPMENT OF IMPROVEMENTS AT THE NATIONAL ATOMIC MUSEUM IN ALBUQUERQUE IN BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 300 of Section 22 of Chapter 110 of Laws 2002 to make improvements, including landscaping, upgrading the storm drainage and parking lot and relocating the national atomic museum from Kirtland air force base to Balloon Fiesta park in Albuquerque in Bernalillo county, shall not be expended for the original purpose but are reauthorized and appropriated for grading, stabilization, sidewalks, parking lots and other infrastructure design and development at the national atomic museum in Albuquerque in Bernalillo county.

Section 153. ALAMEDA-LOS RANCHOS LITTLE LEAGUE COMPLEX--CHANGE PURPOSE FOR THE ALAMEDA LITTLE LEAGUE BASEBALL FIELDS IN ALBUQUERQUE IN BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection V of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to design, construct and make improvements to the Alameda-Los Ranchos little league complex in Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated for improvements to the Alameda little league baseball fields at the Mechenbier property in Albuquerque in Bernalillo county.

Section 154. LOS RANCHOS-ALAMEDA LITTLE LEAGUE COMPLEX AND PARK--CHANGE PURPOSE FOR THE ALAMEDA LITTLE

LEAGUE BASEBALL FIELDS IN ALBUQUERQUE IN BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection D of Section 11 of Chapter 118 of Laws 1998 as amended by Laws 2002, Chapter 99, Section 19 to acquire land for, plan, design and develop the Los Ranchos-Alameda little league complex and park infrastructure in Bernalillo county shall not be expended for the original or amended purpose but are reauthorized and appropriated for improvements to the Alameda little league baseball fields at the Mechenbier property in Albuquerque in Bernalillo county.

Section 155. SOUTH VALLEY HEALTH FACILITY--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD TO CONSTRUCT A HEALTH FACILITY IN THE SOUTH VALLEY OF BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection OOOOO of Section 9 of Chapter 7 of Laws 1998 to renovate a health facility in the south valley of Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated for design and construction of a health facility in the south valley of Bernalillo county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 156. NATIONAL ATOMIC MUSEUM--CHANGE PURPOSE AND AGENCY TO DESIGN AND DEVELOP IMPROVEMENTS AT THE NATIONAL ATOMIC MUSEUM IN ALBUQUERQUE IN BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the office of cultural affairs pursuant to Subsection 8 of Section 10 of Chapter 110 of Laws 2002 to construct and equip the national atomic museum in Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated to the local government division of the department of finance and administration for grading, stabilization, sidewalks, parking lots and other infrastructure design and development at the national atomic museum in Albuquerque in Bernalillo county.

Section 157. WHEELS MUSEUM--CHANGE PURPOSE TO THE CITY OF ALBUQUERQUE TO ACQUIRE LAND AND BUILDINGS TO BE UTILIZED BY THE WHEELS MUSEUM IN BERNALILLO COUNTY.-- The project authorized in Subsection 339 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration to acquire land and buildings, plan, develop and purchase artifacts for the Wheels museum, incorporated, in Albuquerque in Bernalillo county is void. The state board of finance may issue and sell severance tax bonds in the amount of forty-five thousand dollars (\$45,000) to the local government division to acquire land and buildings, plan, develop and purchase artifacts for the city of Albuquerque to be utilized by the Wheels museum in Bernalillo county.

Section 158. ALAMOSA LITTLE LEAGUE FIELDS--CHANGE PURPOSE FOR THE BATAAN MEDIANS IN ALBUQUERQUE IN BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection ZZZZZZZZZZ of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to make improvements to the Alamosa little league fields in Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated for landscape improvements for the Bataan medians in Albuquerque in Bernalillo county.

Section 159. NATIONAL ATOMIC MUSEUM--CHANGE PURPOSE AND AGENCY TO DESIGN AND DEVELOP IMPROVEMENTS AT THE NATIONAL ATOMIC MUSEUM IN ALBUQUERQUE IN BERNALILLO COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the office of cultural affairs pursuant to Subsection 9 of Section 10 of Chapter 110 of Laws 2002 to construct and equip the national atomic museum in Albuquerque in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated to the local government division of the department of finance and administration for grading, stabilization, sidewalks, parking lots and other infrastructure design and development at the national atomic museum in Albuquerque in Bernalillo county.

Section 160. LIFE QUEST BUILDING--CHANGE PURPOSE FOR THE ELFEGO BACA MEMORIAL IN RESERVE IN CATRON COUNTY.--

The project authorized in Subsection 415 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration for Silver City to purchase the Life Quest building in Silver City in Grant county is void. The state board of finance may issue and sell severance tax bonds upon certification by the local government division that the need exists for the issuance of the bonds in the amount of seventy-five thousand dollars (\$75,000) to the local government division to purchase land for the Elfego Baca memorial in Reserve in Catron county.

Section 161. BLACKDOM HISTORIC MARKER IN CHAVES COUNTY--CHANGE PURPOSE TO BLACKDOM HISTORIC MARKER IN ROSWELL IN CHAVES COUNTY.--

The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 360 of Section 22 of Chapter 110 of Laws 2002 to plan, design and construct a historic marker at Blackdom in Chaves county shall not be expended for the original purpose but are reauthorized and appropriated to plan, design and construct a Blackdom historic marker in the city of Roswell in Chaves county.

Section 162. CULTURAL CENTER IN CUBERO--CHANGE PURPOSE TO A CULTURAL AND PERFORMING ARTS FACILITY IN GRANTS IN CIBOLA COUNTY.--

The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection RRRRRRRR of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to plan, design and construct an arts and cultural center in Cubero in Cibola county shall not be expended for the original purpose but are reauthorized and appropriated for renovation and an addition to the cultural and performing arts facility in downtown Grants in Cibola county.

Section 163. NEW MEXICO MINING MUSEUM IN GRANTS IN CIBOLA COUNTY--EXTEND EXPENDITURE PERIOD.--

The period of time in which the balance of the proceeds from the sale of

severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection LL of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to renovate the New Mexico mining museum in Grants in Cibola county may be expended is extended through fiscal year 2008.

Section 164. CULTURAL AND PERFORMING ARTS FACILITY IN DOWNTOWN GRANTS--CHANGE PURPOSE TO A CULTURAL AND PERFORMING ARTS FACILITY IN GRANTS IN CIBOLA COUNTY.--
The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection QQQQQQQQ of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2002, Chapter 99, Section 20 to purchase, renovate or equip buildings for a cultural and performing arts facility in downtown Grants in Cibola county shall not be expended for the original or amended purpose but are reauthorized and appropriated to purchase, renovate, equip, construct and engineer a cultural and performing arts facility in Grants in Cibola county.

Section 165. VIETNAM VETERANS' MEMORIAL--CHANGE PURPOSE TO A PRIMARY CARE CLINIC FOR SOUTH CENTRAL COLFAX COUNTY HOSPITAL DISTRICT IN ANGEL FIRE IN COLFAX COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 370 of Section 22 of Chapter 110 of Laws 2002 to improve the chapel and grounds at the Vietnam veterans' memorial in Angel Fire in Colfax county shall not be expended for the original purpose but are reauthorized and appropriated to plan, design and construct phase 1 of a primary care clinic for the south central Colfax county hospital district in Angel Fire in Colfax county.

Section 166. SOUTH VALLEY CHARTER HIGH SCHOOL--CHANGE PURPOSE AND AGENCY FOR THE FAIRGROUNDS IN COLFAX COUNTY.--Twenty-five thousand dollars (\$25,000) of the proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection 198 of Section 23 of Chapter 110 of Laws 2002 to extend infrastructure to

new buildings at the South Valley charter high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated to the local government division of the department of finance and administration for improvements to the fairgrounds in Colfax county.

Section 167. DONA ANA COMMUNITY CENTER FENCE--EXPAND PURPOSE AND EXTEND EXPENDITURE PERIOD FOR IMPROVEMENTS TO THE RECREATIONAL FACILITIES IN DONA ANA COUNTY.--The balance of the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection LLLL of Section 5 of Chapter 4 of Laws 1996 (1st S.S.) for the purpose of building a fence around the Dona Ana community center in the village of Dona Ana in Dona Ana county may be expended for improvements to the community recreational facilities in Dona Ana county. The period of time in which the appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 168. CHAPARRAL HEALTH COMPLEX--CHANGE PURPOSE TO COLQUIT PARK IN CHAPARRAL IN DONA ANA COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection GGGGGGGGGGGG of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to expand the health complex in Chaparral in Dona Ana county shall not be expended for the original purpose but are reauthorized and appropriated for improvements to Colquit park in Chaparral in Dona Ana county.

Section 169. ANTHONY WATER AND SANITATION DISTRICT--CHANGE PURPOSE AND AGENCY FOR AN OFFICE BUILDING IN ANTHONY IN DONA ANA COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the department of environment pursuant to Subsection 57 of Section 15 of Chapter 110 of Laws 2002 to construct a public service complex for the

Anthony water and sanitation district in Dona Ana county shall not be expended for the original purpose but are reauthorized and appropriated to the local government division of the department of finance and administration to plan, design and construct an office building.

Section 170. TORTUGAS PARK LIGHTING AND PLAYGROUND EQUIPMENT--CHANGE PURPOSE TO IMPROVE AND EQUIP TORTUGAS PARK IN DONA ANA COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 390 of Section 22 of Chapter 110 of Laws 2002 to purchase and install lighting and playground equipment at the ball park in Tortugas in Dona Ana county shall not be expended for the original purpose but are reauthorized and appropriated to improve and equip the park in Tortugas in Dona Ana county.

Section 171. LOVING VILLAGE HALL RENOVATE--CHANGE PURPOSE TO CONSTRUCT A MUNICIPAL COMPLEX IN LOVING IN EDDY COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the capital program fund pursuant to Subsection 411 of Section 22 of Chapter 110 of Laws 2002 to renovate the village hall in Loving in Eddy county shall not be expended for the original purpose but are reauthorized and appropriated to construct a municipal complex in Loving in Eddy county.

Section 172. HIGH SCHOOL ROAD--CHANGE PURPOSE AND AGENCY FOR FAIRGROUND LAND PURCHASE IN GRANT COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the state highway and transportation department pursuant to Subsection 149 of Section 19 of Chapter 110 of Laws 2002 for design of the reconstruction of High School road in Socorro in Socorro county shall not be expended for the original purpose but are reauthorized and appropriated to the local government division of the department of finance and administration to purchase land for the fairgrounds in Grant county.

Section 173. MAGDALENA SENIOR CENTER--CHANGE PURPOSE AND AGENCY FOR THE SANTA CLARA COMMUNITY CENTER IN GRANT COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the state agency on aging pursuant to Subsection 31 of Section 3 of Chapter 110 of Laws 2002 to construct, equip and furnish the senior center in Magdalena in Socorro county shall not be expended for the original purpose but are reauthorized and appropriated to the local government division of the department of finance and administration to renovate the Santa Clara community center in Grant county.

Section 174. BLUE HOLE UPGRADE--EXPAND PURPOSE TO INCLUDE PERCH LAKE IN SANTA ROSA IN GUADALUPE COUNTY.--The balance of the severance tax bond proceeds appropriated to the local government division of the department of finance and administration pursuant to Subsection K of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to upgrade Blue Hole in Santa Rosa in Guadalupe county may also be expended to upgrade Perch lake in Santa Rosa in Guadalupe county.

Section 175. NAVAJO CODE TALKER MEMORIAL AT RED ROCK STATE PARK--CHANGE PURPOSE AND AGENCY FOR A NAVAJO CODE TALKER MEMORIAL IN GALLUP, RED ROCK STATE PARK OR OTHER LOCATION NEAR GALLUP IN MCKINLEY COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection 39 of Section 20 of Chapter 110 of Laws 2002 to plan, design and construct a Navajo code talker memorial at Red Rock state park in McKinley county shall not be expended for the original purpose but are reauthorized and appropriated to the local government division of the department of finance and administration to plan, design and construct a Navajo code talker memorial in Gallup, Red Rock state park or an appropriate location near Gallup in McKinley county.

Section 176. VELARDE APPLE FESTIVAL--CHANGE PURPOSES AND AGENCIES AND EXTEND THE EXPENDITURE PERIODS FOR CHAMITA FIRE STATION, ALCALDE FIRE STATION, JEMEZ SPRINGS FIRE STATION AND THE ESPERANZA DITCH IN RIO ARRIBA AND SANDOVAL COUNTIES.--

A. The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection SSSS of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to purchase real property for the Velarde apple festival in Velarde in Rio Arriba county shall not be expended for the original purpose but are reauthorized and appropriated to the following agencies for the following purposes:

(1) to the local government division of the department of finance and administration:

(a) ten thousand dollars (\$10,000) to complete construction of the fire station in Chamita in Rio Arriba county;

(b) twenty thousand dollars (\$20,000) to continue phase 2 construction of the fire station in Alcalde in Rio Arriba county; and

(c) thirteen thousand dollars (\$13,000) to renovate or construct an addition to the volunteer fire station in Jemez Springs in Sandoval county; and

(2) to the interstate stream commission, seven thousand dollars (\$7,000) to repair the Esperanza ditch in Chimayo in Rio Arriba county.

B. The period of time in which these appropriations may be expended is extended through fiscal year 2008.

Section 177. PINON HILLS PROPERTY--CHANGE PURPOSE TO RENOVATE AND REMODEL THE OLD PINON HILLS PROPERTY IN VELARDE IN RIO ARRIBA COUNTY.--The project authorized in Subsection 455 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration to acquire the Pinon Hills property for a regional treatment and training center in Velarde in Rio Arriba county is void. The state board of finance may issue and sell severance tax bonds upon certification by the local government division that the need exists for the issuance of the bonds in the amount of one hundred thousand dollars (\$100,000) to the local government division to renovate and remodel the old Pinon Hills property as a regional treatment and training center at the same location.

Section 178. SEARCH AND RESCUE PROGRAM--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR EQUIPMENT FOR A SEARCH AND RESCUE PROGRAM IN VELARDE IN RIO

ARRIBA COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection GGGGGGG of Section 9 of Chapter 7 of Laws 1998 to purchase emergency medical equipment for a search and rescue program in Velarde in Rio Arriba county shall not be expended for the original purpose but are reauthorized and appropriated to purchase emergency equipment for a search and rescue program in Velarde in Rio Arriba county. The period of time in which the appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 179. RURAL EVENTS CENTER IN RIO ARRIBA COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsections UUUU and VVVV of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) and amended in Laws 2000 (2nd S.S.), Chapter 23, Section 105 for phase 1 planning, designing and constructing of the rural events center in Rio Arriba county may be expended is extended through fiscal year 2008.

Section 180. EL RITO ELEMENTARY SCHOOL IN RIO ARRIBA COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection PPPP of Section 19 of Chapter 2 of Laws 1999 (1st S.S.) for improvements to El Rito elementary school, including compliance with the Americans with Disabilities Act of 1990, in El Rito in Rio Arriba county may be expended is extended through fiscal year 2008.

Section 181. EMBUDO PUBLIC LIBRARY IN RIO ARRIBA COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection XXXX of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to purchase books and furniture

for the public library in Embudo in Rio Arriba county may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 182. POP WARNER FOOTBALL PROGRAM IN ESPANOLA IN RIO ARRIBA COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection WWW of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to purchase equipment for the Pop Warner football program in Espanola in Rio Arriba county may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 183. DEE BIBBS INDUSTRIAL PARK BUILDINGS--CHANGE PURPOSE FOR THE LAS VEGAS DOWNTOWN REVITALIZATION PROJECT IN SAN MIGUEL COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection CCCCCC of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to improve Dee Bibbs industrial park buildings in Las Vegas in San Miguel county shall not be expended for the original purpose but are reauthorized and appropriated for the Las Vegas downtown revitalization project in San Miguel county.

Section 184. P.U. GALLEGOS MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION--CHANGE PURPOSE AND AGENCY FOR A FIRE STATION IN SAN JOSE IN SAN MIGUEL COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the department of environment pursuant to Subsection OO of Section 8 of Chapter 23 of Laws 2000 (2nd S.S.) and amended in Laws 2002, Chapter 99, Section 12 for water rights acquisition and for design and construction of water system improvements for the P.U. Gallegos mutual domestic water consumers association in San Miguel county shall not be expended for the original or amended purpose but are reauthorized and appropriated to the local

government division of the department of finance and administration to plan, design and construct a fire station in San Jose in San Miguel county.

Section 185. EDGEWOOD BASKETBALL AREA ON STATE LAND--CHANGE PURPOSE AND EXTEND THE EXPENDITURE PERIOD FOR A BASKETBALL AREA IN EDGEWOOD IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection QQQQQ of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to construct a basketball area on state land section 16 in Edgewood in Santa Fe county shall not be expended for the original purpose but are reauthorized and appropriated to construct a basketball area in Edgewood in Santa Fe county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 186. EDGEWOOD COMMUNITY CENTER--EXPAND PURPOSE AND EXTEND THE EXPENDITURE PERIOD TO ACQUIRE A BUILDING FOR THE EDGEWOOD COMMUNITY CENTER IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection NNNNN of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design, construct, equip and furnish the Edgewood community center in Santa Fe county may also be expended to acquire a building for the Edgewood community center in Santa Fe county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 187. EDGEWOOD LIBRARY--EXPAND PURPOSE AND EXTEND THE EXPENDITURE PERIOD TO ACQUIRE A BUILDING FOR THE EDGEWOOD LIBRARY IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection OOOOO of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design, construct, equip and furnish the library in Edgewood in Santa Fe county may also be

expended to acquire a building for the library in Edgewood in Santa Fe county. The period of time in which this appropriation may be expended is extended through fiscal year 2008.

Section 188. MOBILE HEALTH CARE VAN--EXPAND PURPOSE AND EXTEND THE EXPENDITURE PERIOD TO EQUIP THE VAN IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 496 of Section 22 of Chapter 110 of Laws 2002 to purchase a mobile health care van in Santa Fe county may also be expended to equip the van. The period of time in which this appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 189. MOBILE HEALTH CARE VAN--EXPAND PURPOSE AND EXTEND THE EXPENDITURE PERIOD TO EQUIP THE VAN IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 500 of Section 22 of Chapter 110 of Laws 2002 to purchase a mobile health care van in Santa Fe county may also be expended to equip the van. The period of time in which this appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 190. SANTA FE PUBLIC SCHOOL TEACHER HOUSING PROGRAM--CHANGE PURPOSES AND AGENCIES AND EXTEND THE EXPENDITURE PERIODS FOR MONTE ALTO ROAD IN ELDORADO, A SANTA FE HEALTH COMPLEX AND AFFORDABLE HOUSING FOR TEACHERS IN THE SANTA FE PUBLIC SCHOOL DISTRICT IN SANTA FE COUNTY.--

A. The proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection UUUU of Section 19 of Chapter 2 of Laws 1999 (1st S.S.) to plan and develop a school-district-owned teacher housing program in the Santa Fe public school district in Santa Fe county shall not be expended for the original purpose but are reauthorized and appropriated as follows:

(1) two hundred thousand dollars (\$200,000) to the state highway and transportation department to pave and improve Monte Alto road in Eldorado in Santa Fe county;

(2) fifty thousand dollars (\$50,000) to the local government division of the department of finance and administration to acquire land for, plan, design, construct and equip a health complex in Santa Fe in Santa Fe county; and

(3) fifty thousand dollars (\$50,000) to the state department of public education for land acquisition, infrastructure and construction of affordable housing for teachers for the Santa Fe public school district in Santa Fe county.

B. The period of time in which the appropriations may be expended is extended through fiscal year 2008.

Section 191. DWI PROGRAM CENTER--EXPAND PURPOSE TO ACQUIRE, PLAN, DESIGN AND RENOVATE A DWI PROGRAM CENTER IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection UUUUUUUUUU of Section 15 of Laws 2000 (2nd S.S.) to construct, equip and furnish a DWI program center in Santa Fe county may also be expended to acquire, plan, design and renovate a DWI program center in Santa Fe county.

Section 192. HIGH DESERT ATHLETIC CLUB--CHANGE AGENCY FOR OLYMPIC POWER-LIFTING EQUIPMENT AT HIGH DESERT ATHLETIC CLUB IN SANTA FE COUNTY.--The project authorized in Subsection 327 of Section 22 of Chapter 110 of Laws 2002 to the local government division of the department of finance and administration to purchase and install olympic power-lifting equipment at High Desert athletic club in Albuquerque in Bernalillo county is void. The state board of finance may issue and sell severance tax bonds upon certification by the local government division of the department of finance and administration that the need exists for the issuance of the bonds in the amount of fifty thousand dollars (\$50,000) to the local government division to purchase and install olympic power-lifting equipment at High Desert athletic club in Santa Fe county.

Section 193. SANTA FE BOYS' AND GIRLS' CLUB--CHANGE PURPOSE AND EXTEND THE EXPENDITURE PERIOD FOR INFORMATION TECHNOLOGY AT THE SANTA FE BOYS' AND GIRLS' CLUB IN SANTA FE IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection HHHHHHHHHHHH of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to upgrade the computer system at the Santa Fe boys' and girls' club on Alto street in Santa Fe in Santa Fe county shall not be expended for the original purpose but are reauthorized and appropriated to upgrade and provide new visual, audio and mechanical computer equipment, including support systems such as new construction, remodeling of data coaxial and electrical systems, computer workstations, storage areas and a music production studio, at the boys' and girls' club. The period of time in which this appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 194. MOBILE HEALTH CARE VAN--EXPAND PURPOSE AND EXTEND THE EXPENDITURE PERIOD TO EQUIP THE VAN IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 511 of Section 22 of Chapter 110 of Laws 2002 to purchase a mobile health care van in Santa Fe county may also be expended to equip the van. The period of time in which this appropriation may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 195. BEHAVIORAL HEALTH SERVICES FACILITY--EXPAND PURPOSE TO ACQUIRE A FACILITY AND LAND FOR BEHAVIORAL HEALTH SERVICES IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the department of health pursuant to Subsection 8 of Section 18 of Chapter 110 of Laws 2002 to plan, design and construct a facility for the delivery of behavioral health services in Santa Fe county may also be

expended to acquire a facility and land for the delivery of behavioral health services in Santa Fe county.

Section 196. LAS CLINICAS DEL NORTE IN OJO CALIENTE--CHANGE PURPOSE FOR VEHICLES FOR ADMINISTRATIVE CITY OFFICES IN QUESTA IN TAOS COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 518 of Section 22 of Chapter 110 of Laws 2002 to expand and renovate the facility and to purchase and install playground equipment at Las Clinicas del Norte in Ojo Caliente in Taos county shall not be expended for the original purpose but are reauthorized and appropriated to purchase vehicles for administrative city offices in Questa in Taos county.

Section 197. LOS CHAVEZ FIRE DEPARTMENT LAND PURCHASE--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection CCCCCCCCC of Section 17 of Chapter 2 of Laws 1999 (1st S.S.) for the purchase of land for the Los Chavez fire department in Valencia county may be expended is extended through fiscal year 2008.

Section 198. BOSQUE FARMS LIBRARY ADDITION--CHANGE PURPOSE FOR A FIRE AND POLICE STATION IN BOSQUE FARMS IN VALENCIA COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration pursuant to Subsection 526 of Section 22 of Chapter 110 of Laws 2002 to construct an addition for children and youth at the library in Bosque Farms in Valencia county shall not be expended for the original purpose but are reauthorized and appropriated to construct a fire and police station in Bosque Farms in Valencia county.

Section 199. HILLRISE DRIVE NEIGHBORHOOD PARK--CHANGE PURPOSE AND AGENCY FOR NEW MEXICO STATE UNIVERSITY ATHLETIC FACILITIES IMPROVEMENTS IN LAS CRUCES IN DONA ANA COUNTY.--The proceeds from the sale of severance tax bonds

appropriated to the local government division of the department of finance and administration pursuant to Subsection 399 of Section 22 of Chapter 110 of Laws 2002 for site development, landscaping and equipment purchase and installation for a neighborhood park on Hillrise drive in Las Cruces in Dona Ana county shall not be expended for the original purpose but are reauthorized and appropriated to the board of regents of New Mexico state university for improvements at athletic facilities at New Mexico state university in Las Cruces in Dona Ana county.

Section 200. TECHNOLOGY INFRASTRUCTURE FOR E-COMMERCE STATEWIDE--CHANGE PURPOSE AND AGENCY FOR A FEASIBILITY STUDY FOR A DIALYSIS UNIT AT THE PUEBLO OF ACOMA IN CIBOLA COUNTY.--The project authorized in Subsection 2 of Section 12 of Chapter 110 of Laws 2002 to the economic development department to purchase and install technology infrastructure for e-commerce initiatives statewide is void. The state board of finance may issue and sell severance tax bonds upon certification by the New Mexico office of Indian affairs that the need exists for the issuance of the bonds in the amount of thirty thousand dollars (\$30,000) to the New Mexico office of Indian affairs for planning and conducting a feasibility study for a dialysis unit at the Pueblo of Acoma in Cibola county.

Section 201. SKY CITY VISITORS' CENTER AT ACOMA PUEBLO IN CIBOLA COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection B of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to continue phase 2 construction to the sky city visitors' center at Acoma Pueblo in Cibola county may be expended is extended through fiscal year 2008.

Section 202. RED LAKE CHAPTER MULTIPURPOSE BUILDING--CHANGE PURPOSE FOR A STEEL OFFICE BUILDING COMPLEX FOR RED LAKE CHAPTER OF THE NAVAJO NATION IN MCKINLEY COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection 47 of Section 20 of Chapter 110 of Laws 2002 to

renovate the abandoned Thriftway building, purchase and install a modular building and fencing and construct water and sewer lines to the new lagoon for Red Lake chapter's multipurpose building in McKinley county shall not be expended for the original purpose but are reauthorized and appropriated to plan, design and construct a steel office building complex, including utility connections, fencing and site preparation.

Section 203. RED LAKE CHAPTER COMMUNITY BUILDING IMPROVEMENTS--CHANGE PURPOSE FOR A STEEL OFFICE BUILDING COMPLEX AT RED LAKE CHAPTER OF THE NAVAJO NATION IN MCKINLEY COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection 45 of Section 20 of Chapter 110 of Laws 2002 to renovate, expand and extend utilities to a community building in the Red Lake chapter in McKinley county shall not be expended for the original purpose but are reauthorized and appropriated to plan, design and construct a steel office building complex, including utility connections, fencing and site preparation.

Section 204. PUEBLO PINTADO BATHROOM ADDITIONS IN MCKINLEY COUNTY--EXTEND EXPENDITURE PERIOD.--The period of time in which the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection N of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) to purchase materials for bathroom additions for homes in the Pueblo Pintado community in McKinley county may be expended is extended through fiscal year 2008.

Section 205. WHITEHORSE LAKE DOMESTIC WATER SYSTEM INFRASTRUCTURE--CHANGE PURPOSE FOR POWERLINE EXTENSIONS AT LITTLEWATER CHAPTER IN MCKINLEY COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsections J and Q of Section 15 of Chapter 2 of Laws 1999 (1st S.S.) as amended by Laws 2002, Chapter 99, Section 49 to plan, design, acquire rights of way, complete surveys and assessments and construct domestic water system infrastructure in Whitehorse

Lake in McKinley county shall not be expended for the original or amended purpose but are reauthorized and appropriated to plan, design and construct powerline extensions at Littlewater chapter in McKinley county.

Section 206. UPPER FRUITLAND TRUCK PURCHASE--CHANGE PURPOSE AND EXTEND EXPENDITURE PERIOD FOR AN ENGINEERING ASSESSMENT FOR THE UPPER FRUITLAND CHAPTER HOUSE AND A TRUCK FOR THE UPPER FRUITLAND CHAPTER OF THE NAVAJO NATION IN SAN JUAN COUNTY.--

A. The proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs pursuant to Subsection P of Section 12 of Chapter 7 of Laws 1998 and reauthorized in Subsection A of Section 127 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized again in Laws 2002, Chapter 99, Section 44, with sixty thousand dollars (\$60,000) to renovate the chapter house in Upper Fruitland in San Juan county and forty thousand dollars (\$40,000) to purchase a truck for chapter use in Upper Fruitland in San Juan county shall not be expended for the original or reauthorized purposes but are reauthorized and appropriated as follows:

(1) sixty thousand dollars (\$60,000) for an engineering assessment to determine the building's stability at the chapter house in Upper Fruitland; and

(2) forty thousand dollars (\$40,000) to purchase a truck for chapter use in Upper Fruitland in San Juan county.

B. The period of time in which these appropriations may be expended is extended through fiscal year 2004. Any unexpended balance remaining at the end of fiscal year 2004 shall revert to the severance tax bonding fund.

Section 207. SOUTH VALLEY CHARTER HIGH SCHOOL INFRASTRUCTURE--CHANGE PURPOSE FOR PORTABLE CLASSROOMS AT SOUTH VALLEY ACADEMY IN THE ALBUQUERQUE PUBLIC SCHOOL DISTRICT IN BERNALILLO COUNTY.--Fifteen thousand dollars (\$15,000) of the proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection 198 of Section 23 of Chapter 110 of Laws 2002 to extend infrastructure to new buildings at the South Valley charter high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but are reauthorized and

appropriated for portable classrooms at South Valley academy in the Albuquerque public school district in Bernalillo county.

Section 208. EAST MOUNTAIN HIGH SCHOOL FACILITIES--CHANGE PURPOSE FOR AIR CONDITIONING AT EAST MOUNTAIN HIGH SCHOOL IN THE ALBUQUERQUE PUBLIC SCHOOL DISTRICT IN BERNALILLO COUNTY.--The project authorized in Subsection 201 of Section 23 of Chapter 110 of Laws 2002 to the state department of public education to construct facilities at East Mountain high school in the Albuquerque public school district in Cedar Crest in Bernalillo county is void. The state board of finance may issue and sell severance tax bonds upon certification by the state department of public education that the need exists for the issuance of the bonds in the amount of forty thousand dollars (\$40,000) to the state department of public education to purchase and install air conditioning at East Mountain high school in the Albuquerque public school district in Bernalillo county.

Section 209. SOUTH VALLEY CHARTER HIGH SCHOOL INFRASTRUCTURE IMPROVEMENTS--CHANGE PURPOSE FOR PORTABLE CLASSROOMS AT SOUTH VALLEY ACADEMY IN THE ALBUQUERQUE PUBLIC SCHOOL DISTRICT IN BERNALILLO COUNTY.--The project authorized in Subsection 276 of Section 23 of Chapter 110 of Laws 2002 to the state department of public education for infrastructure improvements, including curbing, gutters, paving and water and sewer extensions, at South Valley charter high school in the Albuquerque public school district in Bernalillo county is void. The state board of finance may issue and sell severance tax bonds upon certification by the state department of public education that the need exists for the issuance of the bonds in the amount of one hundred five thousand dollars (\$105,000) for portable classrooms at South Valley academy in the Albuquerque public school district in Bernalillo county.

Section 210. SOUTH VALLEY CHARTER HIGH SCHOOL INFRASTRUCTURE--CHANGE PURPOSE FOR PORTABLE CLASSROOMS AT THE SOUTH VALLEY CHARTER HIGH SCHOOL IN THE ALBUQUERQUE PUBLIC SCHOOL DISTRICT IN BERNALILLO COUNTY.--The project authorized in Subsection 298

of Section 23 of Chapter 110 of Laws 2002 to the state department of public education to extend utility infrastructure for the South Valley charter high school in the Albuquerque public school district in Bernalillo county is void. The state board of finance may issue and sell severance tax bonds upon certification by the state department of public education that the need exists for the issuance of the bonds in the amount of forty thousand dollars (\$40,000) to the state department of public education for portable classrooms at the South Valley charter high school in the Albuquerque public school district in Bernalillo county.

Section 211. ESPANOLA PUBLIC SCHOOL DISTRICT ACTIVITY BUS IN RIO ARRIBA COUNTY--EXTEND EXPENDITURE PERIOD.--

The period of time in which the proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection 378 of Section 23 of Chapter 110 of Laws 2002 to purchase an activity bus for the Espanola public school district in Rio Arriba county may be expended is extended through fiscal year 2005. Any unexpended balance remaining at the end of fiscal year 2005 shall revert to the severance tax bonding fund.

Section 212. SOUTHSIDE SENIOR CENTER IN SANTA FE--CHANGE PURPOSE AND AGENCY FOR AFFORDABLE HOUSING FOR TEACHERS IN THE SANTA FE PUBLIC SCHOOL DISTRICT IN SANTA FE COUNTY.--The proceeds from the sale of severance tax bonds appropriated to the state agency on aging pursuant to Subsection 29 of Section 3 of Chapter 110 of Laws 2002 to design a senior center in the southside of Santa Fe in Santa Fe county shall not be expended for the original purpose but are reauthorized and appropriated to the state department of public education for land acquisition, infrastructure and construction of affordable housing for teachers in the Santa Fe public school district in Santa Fe county.

Section 213. DAM REHABILITATION STATEWIDE--CHANGE AGENCY.--The proceeds from the sale of severance tax bonds appropriated to the water project fund pursuant to Laws 2002, Chapter 110, Section 37 for rehabilitation of existing earthen or

concrete dams throughout the state that may be ordered breached by the state engineer because of dam safety considerations shall be reauthorized and appropriated to the office of the state engineer.

Section 214. MISSION AVENUE ELEMENTARY SCHOOL--CHANGE PURPOSE.--The proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection 71 of Section 23 of Chapter 110 of Laws 2002 to install a grass field and track and shade structure at Mission avenue elementary school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but are reauthorized and appropriated to purchase books and equipment for the FAST reading program at Mission Avenue elementary school.

Section 215. GENOMIC RESEARCH FACILITY--CHANGE PURPOSE TO CANCER CENTER AT UNIVERSITY OF NEW MEXICO.--The capital projects fund appropriation to the board of regents of the university of New Mexico pursuant to Subsection 2 of Section 45 of Chapter 110 of Laws 2002 to plan and design a genomic research facility at the university of New Mexico in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to plan and design phase 2 of the cancer research and treatment center at the university of New Mexico in Albuquerque in Bernalillo county.

Section 216. POJOAQUE CAMPUS LAND ACQUISITION--CHANGE PURPOSE TO POJOAQUE HIGH SCHOOL JACONA CAMPUS WELL, TANK AND DISINFECTION SYSTEM.--The proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection 178 of Section 23 of Chapter 110 of Laws 2002 for land acquisition at the Pojoaque campus in the Pojoaque Valley public school district in Santa Fe county shall not be expended for the original purpose but are reauthorized and appropriated to drill a well and to purchase and install a water storage tank and disinfection system for the Pojoaque high school Jacona campus in the Pojoaque Valley public school district in Santa Fe county.

Section 217. LINCOLN MIDDLE SCHOOL AND RIO RANCHO HIGH SCHOOL PEDESTRIAN ACCESS--CHANGE PURPOSE FOR IMPROVEMENTS TO COUNTY ROAD 84E IN SANTA FE COUNTY.--
The proceeds from the sale of severance tax bonds appropriated to the state department of public education pursuant to Subsection 175 of Section 23 of Chapter 110 of Laws 2002 to construct a connecting sidewalk from Western Hills boulevard to Broadmoor drive to provide pedestrian access for Lincoln middle school and Rio Rancho high school in the Rio Rancho public school district in Sandoval county shall not be expended for the original purpose but are reauthorized and appropriated to the state highway and transportation department for improvements, including paving and drainage, to county road 84E in Santa Fe county.

Section 218. PROJECT SCOPE--EXPENDITURES.--If an appropriation for a project authorized in this act is not sufficient to complete all the purposes specified, the appropriation may be expended for any portion of the purposes specified in the appropriation. Expenditures shall not be made for purposes other than those specified in the appropriation.

Section 219. ART IN PUBLIC PLACES.--Pursuant to Section 13-4A-4 NMSA 1978 and where applicable, the appropriations authorized in this act include one percent for the art in public places fund.

Section 220. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 200, AS AMENDED

WITH EMERGENCY CLAUSE SIGNED APRIL 10, 2003

CHAPTER 430

CHAPTER 430, LAWS 2003

AN ACT

RELATING TO FINANCE; PROVIDING FOR A DISTRIBUTION OF GOVERNMENTAL GROSS RECEIPTS TAX REVENUE TO THE OFFICE OF CULTURAL AFFAIRS; ALLOWING THE OFFICE OF CULTURAL AFFAIRS TO ENTER INTO LOAN AGREEMENTS WITH THE NEW MEXICO FINANCE AUTHORITY.

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

Section 1. Section 7-1-6.38 NMSA 1978 (being Laws 1994, Chapter 145, Section 1, as amended) is amended to read:

"7-1-6.38. DISTRIBUTION--GOVERNMENTAL GROSS RECEIPTS TAX.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public project revolving fund administered by the New Mexico finance authority in an amount equal to seventy-five percent of the net receipts attributable to the governmental gross receipts tax.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to twenty-four percent of the net receipts attributable to the governmental gross receipts tax. Forty-one and two-thirds percent of the distribution is appropriated to the energy, minerals and natural resources department to implement the provisions of the New Mexico Youth Conservation Corps Act and fifty-eight and one-third percent of the distribution is appropriated to the energy, minerals and natural resources department for state park and recreation area capital improvements, including the costs of planning, engineering, design, construction, renovation, repair, equipment and furnishings.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the office of cultural affairs in an amount equal to one percent of the net receipts attributable to the governmental gross receipts tax for capital improvements at state museums and monuments administered by the office of cultural affairs.

D. The state pledges to and agrees with the holders of any bonds or notes issued by the New Mexico finance authority or by the energy, minerals and natural resources department and payable from the net receipts attributable to the governmental gross receipts tax distributed to the New Mexico finance authority or the energy, minerals and natural resources department pursuant to this section that the state will not limit, reduce or alter the distribution of the net receipts attributable to the governmental gross receipts tax to the New Mexico finance authority or the energy, minerals and natural resources department or limit, reduce or alter the rate of imposition of the governmental gross receipts tax until the bonds or notes together with the interest thereon are fully met and discharged. The New Mexico finance authority and the energy, minerals and natural resources department are authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes."

Section 2. Section 9-6-11 NMSA 1978 (being Laws 1980, Chapter 151, Section 56) is amended to read:

"9-6-11. STATE CULTURAL AFFAIRS OFFICER--DUTIES--POWERS.--

A. The state cultural affairs officer is responsible to the secretary of finance and administration for the operation of the office of cultural affairs. It is his duty to manage all operations of the office and to administer and enforce the laws with which he or the office is charged.

B. To perform his duties, the state cultural affairs officer has every power expressly enumerated in the laws, whether granted to him or to the office of cultural affairs or to any division of the office, except where authority conferred upon any division is explicitly exempted from the state cultural affairs officer's authority by statute.

C. Subject to other provisions of law, the state cultural affairs officer shall appoint with the secretary's consent a "director" for each division established within the office of cultural affairs. These appointed positions are exempt from the provisions of the Personnel Act.

D. The state cultural affairs officer may apply for and receive, with the secretary's approval, in the name of the office any public or private funds, including but not limited to United States government funds, available to the office to carry out its programs, duties or services.

E. 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 office of cultural affairs to design, remodel, renovate, rehabilitate or improve state museums and monuments administered by the office of cultural affairs on terms and conditions established by the authority. The state cultural affairs officer shall pledge the governmental gross receipts tax revenues distributed to the office pursuant to Section 7-1-6.38 NMSA 1978 in an amount satisfactory to the authority and in an amount at least sufficient to make the loan payments. The legislature shall not repeal or otherwise modify any law that adversely affects or impairs any loan from the New Mexico finance authority secured by a pledge of governmental gross receipts revenues, unless the loan has been paid in full or provisions have been made for full payment. Any governmental gross receipts tax revenue distributed to the office of cultural affairs remaining after the payment of debt service may be used by the office of cultural affairs for museum capital improvement projects.

F. The state cultural affairs officer may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the office and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the state cultural affairs officer unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the

office shall be adopted, amended or repealed without a public hearing on the proposed action before the state cultural affairs officer 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 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, proposed amendment or repeal of an existing regulation 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 rules and regulations shall be filed in accordance with the State Rules Act."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003 if by that date the New Mexico finance authority, as holder of all outstanding bonds payable from governmental gross receipts tax revenue issued by the state parks division pursuant to the State Park and Recreation Bond Act, has consented in writing to the reduction of the distribution of governmental gross receipts tax revenues to the energy, minerals and natural resources department for state park and recreation capital projects as set forth in Section 7-1-6.38 NMSA 1978.

HOUSE BILL 845, AS AMENDED

CHAPTER 431

CHAPTER 431, LAWS 2003

AN ACT

RELATING TO LAND GRANTS; CREATING A LAND GRANT COMMITTEE.

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

Section 1. LAND GRANT COMMITTEE--CREATION--TERMINATION.-
-The "land grant committee" is created. The committee shall function from the date of its appointment until December 1 prior to the second session of the forty-sixth legislature.

Section 2. MEMBERSHIP--APPOINTMENT--VACANCIES.--The land grant committee shall be composed of six members, two members

appointed by the president pro tempore of the senate, one member appointed by the senate minority leader, two members appointed by the speaker of the house of representatives and one member appointed by the house minority leader. At the time of making the appointments, the New Mexico legislative council shall designate the chair and vice chair of the committee. Members shall be appointed to give the two major political parties in each house the same proportionate representation on the committee as prevails in each house; provided, however, that in no event shall either of the parties have less than one member from each house on the committee. Members may be removed from the committee by the New Mexico legislative council at the request of the committee chair for nonattendance according to council policy. Vacancies on the committee, however caused, may be filled by the New Mexico legislative council, or the council may reduce the size of the committee by not making replacement appointments and in that case need not readjust party representation. No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects the action.

Section 3. DUTIES--REPORT.--

A. After its appointment, the land grant committee shall hold one organizational meeting to develop a work plan, budget and schedule of meetings for the ensuing interim. The work plan and budget shall be submitted to the New Mexico legislative council for approval.

B. Upon approval of the work plan and budget by the New Mexico legislative council, the land grant committee shall:

(1) study existing law regarding land grants and develop legislation to improve existing law;

(2) gather testimony from land grant heirs from across New Mexico to acquire an understanding of the issues and concerns facing them;

(3) gather testimony from other community groups and state agencies to understand the relationship between land grant heirs and other property owners in New Mexico; and

(4) work in conjunction with the Guadalupe Hidalgo task force.

C. The committee shall report its findings and recommendations for the consideration of the second session of the forty-sixth legislature. The report and suggested legislation shall be made available to the New Mexico legislative council on or before December 15 preceding the session.

Section 4. STAFF.--The staff for the land grant committee shall be provided by the legislative council service.

HOUSE BILL 74, AS AMENDED

CHAPTER 432

CHAPTER 432, LAWS 2003

AN ACT

RELATING TO PUBLIC ASSISTANCE; EXTENDING THE LIFE OF THE WELFARE REFORM OVERSIGHT COMMITTEE; AMENDING THE NEW MEXICO WORKS ACT; DECLARING AN EMERGENCY.

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

Section 1. Section 2-17-1 NMSA 1978 (being Laws 1998, Chapter 8, Section 21 and Laws 1998, Chapter 9, Section 21) is amended to read:

"2-17-1. WELFARE REFORM OVERSIGHT COMMITTEE CREATED--TERMINATION.--The joint interim legislative "welfare reform oversight committee" is created. The committee shall function from the date of its appointment until December 15 prior to the first session of the forty-ninth legislature."

Section 2. Section 27-2B-3 NMSA 1978 (being Laws 1998, Chapter 8, Section 3 and Laws 1998, Chapter 9, Section 3, as amended by Laws 2001, Chapter 295, Section 1 and by Laws 2001, Chapter 326, Section 1) is amended to read:

"27-2B-3. DEFINITIONS.--As used in the New Mexico Works Act:

A. "benefit group" means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step- or adopted siblings living with the dependent child's parent or relative within the fifth degree of consanguinity and the parent with whom the children live;

B. "cash assistance" means cash payments funded by the temporary assistance for needy families block grant pursuant to the federal act and by state funds;

C. "department" means the human services department;

D. "dependent child" means a natural, adopted or step-child or ward who is:

(1) seventeen years of age or younger;

(2) eighteen years of age and is enrolled in high school; or

(3) between eighteen and twenty-two years of age and is receiving special education services regulated by the state board of education;

E. "director" means the director of the income support division of the department;

F. "earned income" means cash or payment in kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services;

G. "federal act" means the federal Social Security Act and rules promulgated pursuant to the Social Security Act;

H. "federal poverty guidelines" means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services;

I. "immigrant" means alien as defined in the federal act;

J. "parent" means natural parent, adoptive parent, stepparent or legal guardian;

K. "participant" means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority;

L. "person" means an individual;

M. "secretary" means the secretary of the department;

N. "services" means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment, education and job training placement; one-time payment for necessary

employment-related costs; case management; or other activities whose purpose is to assist transition into employment;

O. "unearned income" means old age, survivors and disability insurance; railroad retirement benefits; veterans administration compensation or pension; military retirement; pensions, annuities and retirement benefits; lodge or fraternal benefits; shared shelter payments; settlement payments; individual Indian money; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income; and

P. "vehicle" means a conveyance for the transporting of individuals to or from employment, for the activities of daily living or for the transportation of goods; "vehicle" does not include boats, trailers or mobile homes used as a principle place of residence."

Section 3. Section 27-2B-6 NMSA 1978 (being Laws 1998, Chapter 8, Section 6 and Laws 1998, Chapter 9, Section 6, as amended by Laws 2001, Chapter 295, Section 3 and by Laws 2001, Chapter 326, Section 3) is amended to read:

"27-2B-6. DURATIONAL LIMITS.--

A. Pursuant to the federal act, on or after

July 1, 1997 a participant may receive federally funded cash assistance and services for up to sixty months.

B. During a participant's fourth, sixth and eighth semi-annual reviews, the department shall examine the participant's progress to determine if the participant has successfully completed an educational or training program or increased the number of hours he is working as required by the federal act. The department may refer the participant to alternative work activities or provide additional services to address possible barriers to employment facing the participant.

C. Up to twenty percent of the population of participants may be exempted from the sixty-month durational limit set out in Subsection A of this section because of hardship or because those participants are battered or subject to extreme cruelty.

D. For the purposes of this section, a participant has been battered or subjected to extreme cruelty if he can demonstrate by reliable medical, psychological or mental reports, court orders or police reports that he has been subjected to and currently is affected by:

(1) physical acts that result in physical injury;

- (2) sexual abuse;
- (3) being forced to engage in nonconsensual sexual acts or activities;
- (4) threats or attempts at physical or sexual abuse;
- (5) mental abuse; or
- (6) neglect or deprivation of medical care except when the deprivation is based by mutual consent on religious grounds.

E. For the purposes of this section, a hardship exception applies to a person who demonstrates through reliable medical, psychological or mental reports, social security administration records, court orders, police reports or department records that he is a person:

- (1) who is barred from engaging in a work activity because he is temporarily or completely disabled;
- (2) who is the sole provider of home care to an ill or disabled family member;
- (3) whose ability to be gainfully employed is affected by domestic violence;
- (4) whose application for supplemental security income is pending in the application or appeals process and who:
 - (a) meets the criteria of Paragraph (1) of this subsection; or
 - (b) was granted a waiver from the work requirement pursuant to Paragraph (1) of Subsection I of Section 27-2B-5 NMSA 1978 in the last twenty-four months; or
- (5) who otherwise qualifies for a hardship exception as defined by the department.

F. Pursuant to the federal act, the department shall not count a month of receipt of cash assistance or services toward the sixty-month durational limit if during the time of receipt the participant:

- (1) was a minor and was not the head of a household or married to the head of a household; or

(2) lived in Indian country, as defined in the federal act, if the most reliable data available with respect to the month indicate that at least fifty percent of the adults living in Indian country or in the village were not employed."

Section 4. Section 27-2B-8 NMSA 1978 (being Laws 1998, Chapter 8, Section 8 and Laws 1998, Chapter 9, Section 8, as amended by Laws 2001, Chapter 295, Section 5 and by Laws 2001, Chapter 326, Section 5) is amended to read:

"27-2B-8. RESOURCES.--

A. Liquid and nonliquid resources owned by the benefit group shall be counted in the eligibility determination.

B. A benefit group may at a maximum own the following resources:

- (1) two thousand dollars (\$2,000) in nonliquid resources;
- (2) one thousand five hundred dollars (\$1,500) in liquid resources;
- (3) the value of the principal residence of the participant;
- (4) the value of burial plots and funeral contracts for family

members;

(5) individual development accounts; and

(6) the value of work-related equipment up to one thousand dollars (\$1,000).

C. Vehicles owned by the benefit group shall not be considered in the determination of resources attributed to the benefit group."

Section 5. Section 27-2B-14 NMSA 1978 (being Laws 1998, Chapter 8, Section 14 and Laws 1998, Chapter 9, Section 14, as amended by Laws 2001, Chapter 295, Section 7 and by Laws 2001, Chapter 326, Section 7) is amended to read:

"27-2B-14. SANCTIONS.--

A. The department shall sanction a member of a benefit group for noncompliance with work requirements or child support requirements.

B. The sanction shall be applied at the following levels:

(1) twenty-five percent reduction of cash assistance for the first occurrence of noncompliance;

(2) fifty percent reduction of cash assistance for the second occurrence of noncompliance; and

(3) termination of cash assistance and ineligibility to reapply for six months for the third occurrence of noncompliance.

C. Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction. The participant shall have ten working days from the date a conciliation notice is mailed to contact the department to initiate the conciliation process. A participant who fails to initiate the conciliation process shall have a notice of adverse action mailed to him after the tenth working day following the date on which the conciliation notice is mailed. Participants who begin but do not complete the conciliation process shall be mailed a notice of adverse action thirty days from the date the original conciliation notice was mailed.

D. Reestablishing compliance shall allow full payment to resume.

E. Noncompliance with reporting requirements may subject a participant to other sanctions, except that an adult member of the benefit group shall not be sanctioned for the failure of a dependent child to attend school.

F. Effective October 1, 2001, the department shall not terminate the medicaid benefits of any member of a benefit group due to imposition of a sanction pursuant to the provisions of this section."

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

HOUSE BILL 122, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 10, 2003

CHAPTER 433

CHAPTER 433, LAWS 2003

AN ACT

RELATING TO OIL AND GAS; PROVIDING FOR DISTRIBUTIONS TO THE OIL AND GAS RECLAMATION FUND; PROVIDING FOR AN OIL AND GAS CONSERVATION TAX RATE CONDITIONED ON THE BALANCE IN THE OIL AND GAS RECLAMATION FUND; PROVIDING FOR ENERGY EDUCATION; MAKING AN APPROPRIATION.

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

Section 1. Section 7-1-6.21 NMSA 1978 (being Laws 1985, Chapter 65, Section 7, as amended) is amended to read:

"7-1-6.21. DISTRIBUTION TO OIL AND GAS RECLAMATION FUND.--

A. With respect to any period for which the rate of the tax imposed by Section 7-30-4 NMSA 1978 is nineteen-hundredths percent, a distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the oil and gas reclamation fund in the amount equal to two-nineteenths of the net receipts attributable to the tax imposed under the Oil and Gas Conservation Tax Act.

B. With respect to any period for which the rate of the tax imposed by Section 7-30-4 NMSA 1978 is eighteen-hundredths percent, a distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the oil and gas reclamation fund in the amount equal to one-eighteenth of the net receipts attributable to the tax imposed under the Oil and Gas Conservation Tax Act."

Section 2. Section 7-30-4 NMSA 1978 (being Laws 1959, Chapter 53, Section 4, as amended) is amended to read:

"7-30-4. OIL AND GAS CONSERVATION TAX LEVIED--COLLECTED BY DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

A. There is levied and shall be collected by the department a tax on all products that are severed and sold. Except as provided in Subsections B and C of this section, the measure and rate of the tax shall be nineteen-hundredths percent of the taxable value of sold products. Every interest owner shall be liable for this tax to the extent of the owner's interest in the value of the products or to the extent of the owner's interest as may be measured by the value of the products. An Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

B. In the event the unencumbered balance in the oil and gas reclamation fund equals or exceeds one million one hundred fifty thousand dollars (\$1,150,000) for

any one-month period computed after receipt of the tax for that month, the rate of the tax levied by this section shall be eighteen-hundredths percent beginning with the first day of the second month following the month in which the unencumbered balance equaled or exceeded one million one hundred fifty thousand dollars (\$1,150,000).

C. After having been reduced to eighteen-hundredths percent, the rate of the tax imposed by this section shall remain at that rate until the unencumbered balance in the oil and gas reclamation fund is less than or equal to five hundred thousand dollars (\$500,000) for any one-month period computed after receipt of the tax for that month, in which event the rate of the tax levied by this section shall be increased to nineteen-hundredths percent beginning with the first day of the second month following the month in which the unencumbered balance equaled or was less than five hundred thousand dollars (\$500,000).

D. The department shall notify taxpayers of any change in the rate of tax imposed by this section."

Section 3. Section 70-2-38 NMSA 1978 (being Laws 1977, Chapter 237, Section 5, as amended) is amended to read:

"70-2-38. OIL AND GAS RECLAMATION FUND ADMINISTERED--PLUGGING WELLS ON FEDERAL LAND--RIGHT OF INDEMNIFICATION--ANNUAL REPORT-- CONTRACTORS SELLING EQUIPMENT FOR SALVAGE.--

A. The oil and gas reclamation fund shall be administered by the oil conservation division of the energy, minerals and natural resources department. Expenditures from the fund may be used by the director of the division for the purposes of:

(1) employing the necessary personnel to survey abandoned wells, well sites and associated production facilities and preparing plans for the plugging of abandoned wells that have not been plugged or that have been improperly plugged and for the restoration and remediation of abandoned well sites and associated production facilities that have not been properly restored and remediated; and

(2) supporting energy education throughout the state in an amount not to exceed one hundred fifty thousand dollars (\$150,000) annually.

B. The director of the oil conservation division of the energy, minerals and natural resources department, as funds become available in the oil and gas reclamation fund, shall reclaim and properly plug all abandoned wells and shall restore and remediate abandoned well sites and associated production facilities in accordance with the provisions of the Oil and Gas Act and the rules and regulations promulgated pursuant to that act. The division may order wells plugged and well sites and associated production facilities restored and remediated on federal lands on which there are no bonds running to the benefit of the state in the same manner and in accordance with the

same procedure as with wells drilled on state and fee land, including using funds from the oil and gas reclamation fund to pay the cost of plugging. When the costs of plugging a well drilled on federal mineral leases or restoring and remediating well sites and associated production facilities are paid from the oil and gas reclamation fund, the division is authorized to bring a suit against the operator or district court of the county in which the well is located for indemnification for all costs incurred by the division in plugging the well or restoring and remediating the well site and associated production facilities. Any funds collected pursuant to a judgment in a suit for indemnification brought under the Oil and Gas Act shall be deposited in the oil and gas reclamation fund.

C. The director of the oil conservation division of the energy, minerals and natural resources department shall make an annual report to the secretary of energy, minerals and natural resources, the governor and the legislature on the use of the oil and gas reclamation fund.

D. Contracts for plugging, reclamation and energy education pursuant to this section shall be entered into in accordance with the provisions of the Procurement Code. A contractor employed by the oil conservation division of the energy, minerals and natural resources department to plug a well is authorized to sell for salvage the equipment and material that is removed from the well in plugging it."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 321, AS AMENDED

CHAPTER 434

CHAPTER 434, LAWS 2003

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING THE SPECIAL URBAN SCHOOL DISTRICT ACT; PROVIDING POWERS AND DUTIES; DECLARING AN EMERGENCY.

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

Section 1. A new section of the Public School Code is enacted to read:

"SHORT TITLE.--This act may be cited as the "Special Urban School District Act"."

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

"DEFINITION.--As used in the Special Urban School District Act, "special urban school district" means a school district with student enrollment over thirty-five thousand that does not charge tuition and does not have admission requirements in addition to those found in the Public School Code."

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

"SPECIAL URBAN SCHOOL DISTRICT APPLICATION REQUIREMENTS--PROCESS--ELECTION.--

A. Before a local school board applies for a charter to the state board, the board shall submit the question of whether to operate the school district as a charter school district to the qualified electors of the school district at any regular school board election or at any special election called for the purpose of voting on the question. Any election called for this purpose shall be conducted pursuant to the School Election Law.

B. If a majority of those voting voted in favor of the district becoming a charter school district, the local school board shall submit an application for charter school district status to the state board.

C. Not less than sixty-five percent of the employees of the school district must sign a petition in support of the school district becoming a charter school district."

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

"SPECIAL URBAN SCHOOL DISTRICT--CHARTER REQUIREMENTS.--

A. A local school board of a school district that meets the requirements for a special urban school district shall enter into a contract with the state board establishing its charter to operate as a special urban school district from July 1, 2003 through June 30, 2007.

B. The contract shall reflect all agreements regarding the operation of the special urban school district. The terms of the contract may be revised at any time with the approval of both the state board and the special urban school district.

C. The charter shall include:

(1) assurances that the special urban school district shall comply with state laws pertaining to accreditation, state educational standards, assessment and accountability and financial requirements;

(2) a statement of mission and purpose for the operation of the special urban school district, including the district's goals and objectives;

(3) evidence that the special urban school district's educational and operational plans are economically sound and comply with all state and federal laws;

(4) evidence that the charter is educationally sound and is in the best interests of the students, the schools and the school clusters;

(5) a description of the way the special urban school district's educational program will meet the individual needs of the students, including students with disabilities and students determined to be at risk;

(6) an explanation of the relationship that will exist between the special urban school district and its employees and a description of the way the terms and conditions of employment will be addressed with affected employees;

(7) a description of all waivers from state board rules requested and granted; and

(8) a description of school clusters and a description by cluster, including but not limited to:

(a) the pre-kindergarten through grade twelve alignment of instructional practices designed to achieve student success and a coordinated professional development program reflecting the instructional alignment;

(b) the accountability system that measures student and instructional outcomes;

(c) how financial resources will be directed to each cluster and school's instructional program; and

(d) how parental, educator and community involvement at the school, cluster and district levels will be achieved.

D. The special urban school district shall:

(1) continue to operate as a public, nonsectarian public school district and operate in the same geographic boundaries that existed for the school district prior to becoming a special urban school district;

(2) receive state money as provided in the Public School Code;

(3) provide special education services as required by state and federal law;

(4) be liable for timely payment on its bonded indebtedness and subject to the same bonded indebtedness limitations as it was before becoming a special urban school district; and

(5) be subject to all state and federal laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.

E. The special urban school district shall be accountable to the state board for ensuring compliance with its charter and applicable state law.

F. Employees of a special urban school district shall be considered continuous employees without interruption of employment pursuant to the School Personnel Act and shall be afforded procedural due process rights and protection.

G. The governing body of the special urban school district shall continue to be the local school board."

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

"DISTRICT RESPONSIBILITIES--EXEMPTIONS FROM PUBLIC SCHOOL CODE.--

A. The special urban school district shall promulgate rules to ensure that the individual needs of students, schools and school clusters are met.

B. The special urban school district is exempt from provisions of the Public School Code and rules adopted pursuant to that act pertaining to the individual class load, teaching load, length of the school day, staffing patterns, subject areas and instructional materials.

C. The state board may waive state board requirements or rules and provisions of the Public School Code pertaining to graduation requirements, evaluation standards for school personnel, school principal duties and driver education."

Section 6. A new section of the Public School Code is enacted to read:

"GROUNDS FOR NONRENEWAL, PROBATION OR REVOCATION OF
CHARTER--APPEAL.--

A. The department of education shall provide ongoing evaluation of the special urban school district's compliance with accreditation and state laws pertaining to state educational standards, assessment and accountability and financial requirements. Department of education staff shall visit the special urban school district at least once each year to provide technical assistance and to determine the status of the district and the progress of the district toward the goals of its charter.

B. If the department of education finds that the special urban school district is not in compliance with its charter or with any applicable state or federal law or regulation, the state board may revoke the charter or place the district on probationary status."

Section 7. A new section of the Public School Code is enacted to read:

"REPORT TO LEGISLATURE AND GOVERNOR.--Not later than September 30, 2006, the special urban school district and the department of education shall report to the legislature and the governor on the progress of the special urban school district and make recommendations regarding the continuation of the special charter."

Section 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 819, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 11, 2003

CHAPTER 435

CHAPTER 435, LAWS 2003

AN ACT

RELATING TO MUNICIPALITIES AND COUNTIES; AMENDING THE PUBLIC
IMPROVEMENT DISTRICT ACT TO REQUIRE THE GOVERNING BODY TO ACT

WITHIN NINETY DAYS AFTER RECEIVING A PETITION FOR CREATION OF A PUBLIC IMPROVEMENT DISTRICT.

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

Section 1. Section 5-11-3 NMSA 1978 (being Laws 2001, Chapter 305, Section 3) is amended to read:

"5-11-3. RESOLUTION DECLARING INTENTION TO FORM DISTRICT.--

A. If the public convenience and necessity require, and on presentation of a petition signed by the owners of at least twenty-five percent of the real property by assessed valuation proposed to be included in the district, the governing body may adopt a resolution declaring its intention to form a public improvement district to include contiguous or noncontiguous property, which shall be wholly within the corporate boundaries of the municipality or county. If the governing body fails to act within ninety days following presentation of a petition to create a public improvement district, the petition shall be deemed to have been accepted by the governing body, which shall adopt a resolution and hold a public hearing pursuant to this section. The resolution shall state the following:

(1) the area or areas to be included in the district;

(2) the purposes for which the district is to be formed;

(3) that a general plan for the district is on file with the clerk that includes a map depicting the boundaries of the district and the real property proposed to be included in the district, a general description of anticipated improvements and their locations, general cost estimates, proposed financing methods and anticipated tax levies, special levies or charges, and that may include possible alternatives, modifications or substitutions concerning locations, improvements, financing methods and other information provided in the general plan;

(4) the rate, method of apportionment and manner of collection of a special levy, if one is proposed, in sufficient detail to enable each owner or resident within the district to estimate the maximum amount of the proposed levy;

(5) a notice of public hearing in conformity with the requirements of Section 5-11-4 NMSA 1978;

(6) the place where written objections to the formation of the district may be filed by an owner;

(7) that formation of the district may result in the levy of property taxes or the imposition of special levies to pay the costs of public infrastructure

constructed by the district and for their operation and maintenance and may result in the assessment of fees or charges to pay the cost of providing enhanced services;

(8) a reference to the Public Improvement District Act; and

(9) whether the district will be governed by a district board comprised of the members of the governing body, ex officio, or comprised of five directors initially appointed by the governing body.

B. The resolution may direct that, prior to holding a hearing on formation of the district, a study of the feasibility and estimated costs of the improvements, services, enhanced services and other benefits proposed to be provided pursuant to the Public Improvement District Act be prepared by the petitioners for consideration by the governing body at its hearing on formation of the district. The study shall substantially comply with the requirements of Section 5-11-16 NMSA 1978. The district may require that the persons petitioning for formation of the district deposit with the treasurer an amount equal to the estimated costs of conducting the feasibility study and other estimated formation costs, to be reimbursed if the district is formed and public improvements are financed pursuant to the Public Improvement District Act.

C. The resolution shall direct that a hearing on formation of the district be scheduled and that notice be mailed and published as provided in Section 5-11-4 NMSA 1978.

D. Before adopting a resolution pursuant to this section, a general plan for the district shall be filed with the clerk."

SENATE BILL 451, AS AMENDED

CHAPTER 436

CHAPTER 436, LAWS 2003

AN ACT

RELATING TO HOME LOANS; ENACTING THE HOME LOAN PROTECTION ACT; PROHIBITING CERTAIN PRACTICES BY CREDITORS; PROVIDING CIVIL REMEDIES.

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

Section 1. SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Home Loan Protection Act".

Section 2. FINDINGS.--The legislature finds that:

A. abusive mortgage lending has become an increasing problem in New Mexico, exacerbating the loss of equity in homes and causing the number of foreclosures to increase in recent years;

B. one of the most common forms of abusive lending is the making of loans that are equity-based, rather than income-based;

C. the financing of points and fees in these loans provides immediate income to the originator and encourages creditors to repeatedly refinance home loans; and

D. while the marketplace appears to operate effectively for conventional mortgages, too many homeowners find themselves victims of overreaching creditors who provide loans with high costs and terms that are unnecessary to secure repayment of the loan.

Section 3. DEFINITIONS.--As used in the Home Loan Protection Act:

A. "affiliate" means a person that controls, is controlled by or is under common control with another person;

B. "bona fide discount points" means loan discount points that are knowingly paid by the borrower for the express purpose of reducing, and which in fact do result in a bona fide reduction of, the annual percentage rate otherwise applicable to the home loan; provided, however that discount points are not "bona fide discount points" if the annual percentage rate otherwise applicable to the home loan exceeds the conventional mortgage rate by more than:

(1) one and one-half percentage points for a home loan secured by a first lien; or

(2) three percentage points for a home loan secured by a junior lien;

C. "borrower" means a natural person obligated to repay a home loan, including a co-borrower, cosigner or guarantor;

D. "bridge loan" means a loan for the initial construction of a borrower's principal dwelling on land owned by the borrower with a maturity of less than eighteen months that only requires the payment of interest until the entire unpaid balance is due and payable;

E. "conventional mortgage rate" means the most recently published annual yield on conventional mortgages published by the board of governors of the federal reserve system as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;

F. "conventional prepayment penalty" means a prepayment penalty or fee that may be collected in a home loan and that is authorized by federal law; provided that a prepayment penalty is not a "conventional prepayment penalty" if the home loan:

(1) has an annual percentage rate that exceeds the conventional mortgage rate by more than two percent; or

(2) permits prepayment fees or penalties that exceed two percent of the amount prepaid;

G. "creditor" means a person who regularly makes a home loan and includes a loan broker;

H. "high-cost home loan" means a home loan in which:

(1) the contract rate exceeds the rates threshold; or

(2) the total points and fees exceed the total points and fees threshold;

I. "home loan" means a loan, including an open-end credit plan, other than a reverse mortgage transaction or a bridge loan, where the principal amount does not exceed the conforming loan size limit for a single-family dwelling as established by the federal national mortgage association and where the loan is secured by:

(1) a mortgage or deed of trust on real estate in this state upon which there is located or there is to be located a structure:

(a) designed principally for occupancy by one to four families; and

(b) that is or will be occupied by a borrower as the borrower's principal residence; or

(2) a security interest on a manufactured home that is or will be occupied by a borrower as the borrower's principal residence;

J. "manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or, when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling

with a permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of the United States department of housing and urban development and complies with the standards established under the federal National Manufactured Housing Construction and Safety Standards Act of 1974. "Manufactured home" does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located;

K. "points and fees" means:

(1) all amounts payable by a borrower at or before the closing of a home loan, exclusive of any time-price differential due at closing on the loan proceeds, including:

(a) loan discount points or other discounts;

(b) loan fees, finder's fees or similar charges; and

(c) fees for preparation of loan-related documents; but

(d) does not include fees for the following purposes, if the amounts are bona fide and reasonable and paid to a person other than the creditor or an affiliate of the creditor: 1) service or carrying charges; 2) credit reports; 3) title exam, title insurance or similar purposes; 4) escrow charges for future payments of taxes and insurance; 5) fees for notarizing deeds and other documents; 6) appraisals, including fees related to any pest infestation or flood hazard inspections conducted prior to closing; 7) inspection performed prior to closing; 8) attorney fees, if the borrower has the right to select the attorney from an approved list or otherwise; 9) fire and hazard insurance and flood insurance premiums if the conditions in 12 C.F.R. s.226.4(d)(2) are met; 10) tax payment services; 11) surveys; 12) flood certification; and 13) pest infestation and flood determination;

(2) all compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction;

(3) the maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents;

(4) all prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor;

(5) the cost of all premiums financed by the creditor, directly or indirectly, for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor, directly or indirectly, for any debt cancellation or suspension agreement or contract, except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor; and

(6) for open-end loans, the points and fees included in Paragraphs (1) through (5) of this subsection that are known at or before closing plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line;

L. "rate threshold" means:

(1) for a first lien mortgage home loan, an interest rate equal to seven percentage points over the weekly average yield on comparable United States treasury securities on the fifteenth day of the month immediately preceding the month in which the loan is made; and

(2) for a subordinate mortgage lien, an interest rate equal to nine percentage points over the weekly average yield on comparable United States treasury securities on the fifteenth day of the month immediately preceding the month in which the loan is made;

M. "total points and fees" means the result obtained by subtracting the sum of the conventional prepayment penalties and the bona fide discount points paid from the sum of the points and fees, except that if the sum of the conventional prepayment penalties and the bona fide discount points paid exceeds two points, then only the amount that represents two points shall be subtracted; and

N. "total points and fees threshold" means:

(1) for a home loan in which the total principal loan amount is twenty thousand dollars (\$20,000) or more, an amount equal to five percent of the total principal loan amount; and

(2) for a home loan in which the total principal loan amount is less than twenty thousand dollars (\$20,000), an amount equal to the lesser of one thousand dollars (\$1,000) or eight percent of the total principal loan amount."

Section 4. PROHIBITED PRACTICES AND PROVISIONS REGARDING HOME LOANS.--

A. No creditor shall finance, directly or indirectly, credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension

agreement or contract, provided that nothing in this subsection prohibits the payment or receipt of insurance premiums or debt cancellation or suspension fees calculated on the unpaid balance of a home loan and paid on a monthly basis or prohibits bona fide credit property insurance required by the federal housing administration or the United States department of agriculture to be paid in a single premium to the respective federal agency. As used in this subsection, "credit property insurance" means property insurance written in connection with credit transactions under which the creditor is the primary beneficiary.

B. No creditor shall knowingly and intentionally engage in the unfair act or practice of flipping a home loan. As used in this subsection, "flipping a home loan" means the making of a home loan to a borrower that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan and the borrower's circumstances.

Section 5. LIMITATIONS AND PROHIBITED PRACTICES FOR HIGH-COST HOME LOANS.--

A. No creditor making a high-cost home loan shall directly or indirectly finance any points or fees in excess of two percent of the principal loan amount.

B. No creditor shall make a high-cost home loan that contains a scheduled payment that is more than twice as large as the average of earlier scheduled payments, provided that this provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of a borrower.

C. No creditor shall make a high-cost home loan that includes payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

D. No creditor shall make a high-cost home loan that contains a provision that increases the interest rate after default, provided that this provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

E. No creditor shall make a high-cost home loan that includes terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

F. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial

forum where the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

G. After April 1, 2004, no creditor shall make a high-cost home loan without first receiving certification from a third-party, nonprofit counselor approved by the United States department of housing and urban development, the New Mexico mortgage finance authority or the director of the financial institutions division of the regulation and licensing department that the borrower has received counseling on the advisability of the loan transaction.

H. No creditor shall make a high-cost home loan without due regard to repayment ability. A creditor who follows debt-to-income ratios and the residual income guidelines established by rule of the financial institution division of the regulation and licensing department shall benefit from a rebuttable presumption that the creditor made the loan with due regard to repayment ability.

I. No creditor shall pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan unless:

(1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; and

(2) the instrument is payable jointly to the borrower and the contractor, or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the creditor and the contractor prior to the disbursement.

J. No creditor shall charge a borrower any fees or other charges, other than those that are bona fide, reasonable and actual, to modify, renew, extend or amend a high-cost home loan.

K. No creditor shall charge a borrower more than seventy-five dollars (\$75.00) to defer any payment due under the terms of a high-cost home loan.

L. No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of the existing loan or debt.

M. No creditor shall make a high-cost home loan that provides for a late payment fee except as follows:

(1) the late payment fee shall not be in excess of five percent of the amount of the payment past due;

(2) the late payment fee shall only be assessed for a payment past due for fifteen days or more;

(3) the late payment fee shall not be imposed more than once with respect to a single late payment and no late payment fee shall be charged with respect to a subsequent payment that would have been a full payment but for the previous default or the imposition of the previous late payment fee;

(4) no late payment fee shall be charged unless the creditor notifies the borrower within forty-five days following the date the payment was due that a late payment fee has been imposed for a particular late payment. A late payment fee that the creditor has collected shall be reimbursed if the borrower presents proof of having made a timely payment; and

(5) a creditor shall treat each payment as posted on the same business day as it was received by the creditor, service, creditor's agent or at the address provided to the borrower by the creditor, service or the creditor's agent for making payments.

N. No creditor shall make a high-cost home loan that contains a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness, provided that this provision does not prohibit acceleration of a loan in good faith due to a borrower's failure to abide by the material terms of the loan.

O. No creditor shall make a high-cost home loan that contains a provision that requires a penalty or premium for prepayment of the balance of the indebtedness.

P. A creditor shall not make a high-cost home loan unless the creditor has given the following notice, or a substantially similar notice, in writing, to the borrower, acknowledged in writing and signed by the borrower not later than the time the notice is required under the notice provision contained in 12 C.F.R. s.226.31(c):

NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY CONTACTING THE NEW MEXICO REGULATION AND LICENSING DEPARTMENT.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

Section 6. DEFAULT--NOTICE--RIGHT TO CURE.--

A. Before an action is filed to foreclose or collect money due pursuant to a home loan or before other action is taken to seize or transfer ownership of property subject to a home loan, the creditor or creditor's assignee of the loan shall deliver to the borrower a notice of the right to cure the default informing the borrower of:

(1) the nature of the default;

(2) the borrower's right to cure the default by paying the sum of money required, provided that a creditor or assignee shall accept any partial payment made or tendered in response to the notice. If the amount necessary to cure the default will change within thirty days of the notice, due to the application of a daily interest rate or the addition of late fees, as allowed by the Home Loan Protection Act, the notice shall give sufficient information to enable the borrower to calculate the amount at any point within the thirty-day period;

(3) the date by which the borrower may cure the default to avoid a court action, acceleration and initiation of foreclosure or other action to seize the property, which date shall not be less than thirty days after the date the notice is delivered, and the name and address and telephone number of a person to whom the payment or tender shall be made;

(4) that if the borrower does not cure the default by the date specified, the creditor or assignee may file an action for money due or take steps to terminate the borrower's ownership in the property by requiring payment in full of the home loan and commencing a foreclosure proceeding or other action to seize the property; and

(5) the name and address and the telephone number of a person whom the borrower may contact if the borrower disagrees with the assertion that a default has occurred or the correctness of the calculation of the amount required to cure the default.

B. If a creditor or assignee asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the home loan, the borrower, or anyone authorized to act on the borrower's behalf, may, at any time prior to the time title is transferred by means of foreclosure, by judicial proceeding and sale or otherwise, cure the default, and reinstate the home loan. Cure of the default shall reinstate the borrower to the same position as if the default had not occurred and shall nullify, as of the date of the cure, an acceleration of any obligation under the home loan arising from the default.

C. To cure a default under this section, a borrower shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default, other than the fees specifically allowed by this subsection. The borrower shall not be liable for any attorney fees relating to the default that are incurred by the creditor or assignee prior to or during the thirty-day period set forth in Subsection A of this section, nor for any such fees in excess of one hundred dollars (\$100) that are incurred by the creditor or assignee after the expiration of the thirty-day period but prior to the time the creditor or assignee files a foreclosure or other judicial action or takes other action to seize or transfer ownership of the real estate. After the creditor or assignee files a foreclosure or other judicial action or takes other action to seize or transfer ownership of the real estate, the borrower shall only be liable for attorney fees that are reasonable and actually incurred by the creditor or assignee, based on a reasonable hourly rate and a reasonable number of hours.

D. If a default is cured prior to the initiation of any action to foreclose or to seize the residence, the creditor or assignee shall not institute a proceeding or other action for that default. If a default is cured after the initiation of any action, the creditor or assignee shall take such steps as are necessary to terminate the action.

E. A creditor or a creditor's assignee of a home loan that has the legal right to foreclose shall, in a foreclosure, use the judicial foreclosure procedures provided by law. In such a proceeding, the borrower may assert the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any based on a violation of the Home Loan Protection Act, though no such claim or defense shall be deemed a compulsory counterclaim.

F. The provisions of this section apply only to home loans that were high-cost home loans at the time of origination.

Section 7. CLAIMS AGAINST CERTAIN SELLERS.--Notwithstanding any other provision of law, if a home loan is made, arranged or assigned by a person selling a manufactured home to a borrower

or selling home improvements on the residence of a borrower, the borrower may assert all affirmative claims and defenses that the borrower may have against the seller or home improvement contractor against a creditor or a holder or service of the home loan, in any capacity; provided, however, that any claim brought by a borrower pursuant to this section shall be limited to amounts required to reduce or extinguish the borrower's liability under the home loan plus the total amount paid by the borrower in connection with the transaction plus amounts required to recover costs, including reasonable attorney fees.

Section 8. SUBTERFUGE PROHIBITED.--No person shall, with the intent to avoid the application or provisions of the Home Loan Protection Act:

- A. divide a loan transaction into separate parts;
- B. structure a home loan transaction as an open-end loan when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or
- C. perform any other subterfuge.

Section 9. CIVIL ACTION.--

A. A borrower harmed by a violation of the Home Loan Protection Act may bring a civil action to recover:

- (1) actual damages, including consequential and incidental damages;
- (2) statutory damages equal to two times the finance charge paid under the loan and forfeiture of the remaining interest under the loan;
- (3) punitive damages, when the violation was malicious or reckless;
- (4) costs and reasonable attorney fees; and
- (5) injunctive, declaratory and such other equitable relief as the court deems appropriate in an action to enforce compliance with the Home Loan Protection Act.

B. The civil action and remedies provided in this section are not exclusive and are in addition to any other action or remedies available to a borrower under applicable law.

C. A creditor is not liable in an action brought pursuant to this section if:

(1) within thirty days of the home loan closing and prior to receiving any notice from the borrower of the violation, the creditor has made appropriate restitution to the borrower, and appropriate adjustments are made to the loan; or

(2) the violation was not intentional and resulted from a bona fide error in fact notwithstanding the maintenance of procedures reasonably adopted to avoid such errors and within sixty days of the loan closing and prior to receiving any notice from the borrower of the violation, the borrower is notified of the violation, appropriate restitution is made to the borrower and appropriate adjustments are made to the loan.

Section 10. PREEMPTION.--Counties and municipalities, including home rule counties and municipalities, are prohibited from enacting and enforcing ordinances, resolutions or rules regulating financial or lending activities or imposing reporting requirements or any other obligations upon creditors regarding home loans that are subject to the Home Loan Protection Act.

Section 11. ACTIONS BASED ON HOME LOANS.--

A. Notwithstanding any other provision of law, any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original creditor of the loan; provided that this subsection shall not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising reasonable due diligence could not determine that the mortgage was a high-cost home loan. A purchaser or assignee has exercised such due diligence if the purchaser or assignee:

(1) has in place at the time of the purchase or assignment of the subject loans, policies that expressly prohibit its purchase or acceptance of an assignment of any high-cost home loans;

(2) requires by contract that a seller or assignor of the home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either:

(a) the seller or assignor will not sell or assign any high-cost home loans to the purchaser or assignee; or

(b) that such seller or assignor is the beneficiary of such a representation and warranty from a previous seller or assignor; and

(3) exercises reasonable due diligence at the time of purchase or assignment of home loans or within a reasonable period of time thereafter intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-cost home loans; or

(4) satisfies the requirements in Paragraphs (1) and (2) of this subsection and establishes that a reasonable person exercising ordinary due diligence could not determine, based on the documentation required by the federal Truth in Lending Act and the itemization of the amount financed and other disclosure disbursements, that the loan was a high-cost home loan.

B. Notwithstanding any other law to the contrary, a borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of the home loan:

(1) within six years of the closing of a high-cost home loan, a violation of the Home Loan Protection Act in connection with the loan as an original action;

(2) at any time during the term of a high-cost home loan, any defense, claim or counterclaim, or action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan, including but not limited to a violation of the Home Loan Protection Act, after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become sixty days in default; or

(3) within three years of the closing of a home loan, a violation of Subsection B of Section 4 of the Home Loan Protection Act as a defense, claim or counterclaim or as an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan, after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become sixty days in default.

C. In an action, claim or counterclaim brought pursuant to Subsection B of this section, the borrower may recover only amounts required to reduce or extinguish the borrower's liability under the home loan plus amounts required to recover costs and reasonable attorney fees.

D. Nothing in this section shall limit the substantive rights, remedies or procedural rights available to a borrower against a creditor, assignee or holder that are otherwise provided by law.

Section 12. APPLICATION OF UNFAIR PRACTICES ACT.--A violation of the Home Loan Protection Act constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act.

Section 13. ATTORNEY GENERAL--ENFORCEMENT OF RULES.--The financial institution division of the regulation and licensing department shall enforce the provisions of the Home Loan Protection Act and, after consulting with the attorney general and considering similar rules of the federal housing administration and the federal department of veterans affairs, shall adopt rules required pursuant to Subsection H of Section 5 of the Home Loan Protection Act and such other rules as are necessary to implement that act.

Section 14. LIBERAL INTERPRETATION.--The Home Loan Protection Act shall be liberally construed to carry out its purpose.

Section 15. Section 58-7-9 NMSA 1978 (being Laws 1959, Chapter 327, Section 10, as amended) is amended to read:

"58-7-9. CONSTRUCTION.--

A. None of the provisions of the New Mexico Small Loan Act of 1955 are amended or repealed by the New Mexico Bank Installment Loan Act of 1959.

B. With the exception of precomputed loan transactions, a lender is not bound by the provisions of the New Mexico Bank Installment Loan Act of 1959 in making loans where the loan is made in accordance with the provisions of Sections 56-8-9 through 56-8-14 NMSA 1978.

C. None of the provisions of the New Mexico Bank Installment Loan Act of 1959 apply to the assignment or purchase of retail installment contracts originated under the provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or originated under the provisions of Sections 56-1-1 through 56-1-15 NMSA 1978.

D. In the event of a conflict between a requirement of the New Mexico Bank Installment Loan Act of 1959 and a requirement of the Home Loan Protection Act, the requirement of the Home Loan Protection Act shall control.

E. As used in the New Mexico Bank Installment Loan Act of 1959:

(1) "year" means three hundred sixty-five days; and

(2) "month" means one-twelfth of a year.

F. The director of the financial institutions division of the regulation and licensing department shall issue and file as required by law interpretive regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of 1959. In issuing, amending or repealing interpretive regulations, the director shall issue the regulation amendment or repeal of the regulation as a proposed regulation amendment or repeal of a regulation and file it for public inspection in the office of the director of the financial institutions division. Distribution thereof shall be made to interested persons, and their comments shall be invited. After the proposed regulation has been on file for not less than two months, the director may issue it as a final regulation by filing as required by law. Any person who is or may be adversely affected by the adoption, amendment or repeal of a regulation under this section may file an appeal of that action in the district court in Santa Fe county within thirty days after the filing of the adopted regulation, amendment or repeal as required by law.

G. Any person, corporation or association complying with the regulations adopted by the director of the financial institutions division of the regulation and licensing department is deemed to have complied with the provisions of the New Mexico Bank Installment Loan Act of 1959.

H. All loans other than precomputed loan transactions made under the New Mexico Bank Installment Loan Act of 1959 shall be clearly identified on the loan documents as being made under that act."

Section 16 Section 58-21-6 NMSA 1978 (being Laws 1983, Chapter 86, Section 6, as amended by Laws 2001, Chapter 251, Section 5 and by Laws 2001, Chapter 264, Section 5) is amended to read:

"58-21-6. PERSONS EXEMPT FROM REGISTRATION.--The following persons shall be exempt from all provisions of the Mortgage Loan Company and Loan Broker Act:

A. banks, trust companies, savings and loan associations, credit unions, insurance companies or real estate investment trusts as defined in 26 USCA 856;

B. an attorney licensed to practice law in New Mexico who is not principally engaged in the business of negotiating loans secured by real or personal property, when the person renders services in the course of his practice as an attorney;

C. a New Mexico-licensed real estate broker rendering service in the performance of his duties as a real estate broker who obtains financing for a real estate transaction involving an actual bona fide sale of real estate or real estate contract handled by the broker and who receives only the customary real estate broker's commission in connection with the transaction;

D. a person doing an act under order of a court;

E. a person making or acquiring a mortgage loan with his own funds for his own investment without the intent to resell the mortgage loan;

F. the United States of America, state of New Mexico or any of their branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state and their agencies, instrumentalities and institutions; and

G. a company licensed as a small business investment company under the federal Small Business Investment Act of 1958.

Section 17. Section 58-21-19 NMSA 1978 (being Laws 1983, Chapter 86, Section 19, as amended by Laws 2001, Chapter 251, Section 12 and by Laws 2001, Chapter 264, Section 12) is amended to read:

"58-21-19. COMPLIANCE WITH FEDERAL LAW.--In connection with any loan originated, brokered, negotiated or made by a registrant pursuant to the Mortgage Loan Company and Loan Broker Act, registrants shall comply with:

A. applicable federal consumer lending laws; and

B. the provisions of the Home Loan Protection Act."

Section 18. SEVERABILITY.--The provisions of the Home Loan Protection Act are severable, and if any part or application of that act is held invalid, the remainder or its application to other situations or persons shall not be affected. If any provision of the Home Loan Protection Act is declared to be inapplicable to any specific category, type or kind of loan or points and fees, the provisions of that act shall continue to apply with respect to all other loans and points and fees.

Section 19. APPLICABILITY--EFFECTIVE DATE.--

A. Except as provided in Subsection B of this section, the Home Loan Protection Act shall apply to all home loans made or entered into after January 1, 2004.

B. The effective date of the provisions of Section 10 of this act is July 1, 2003 and, on or after that date, no county or municipality shall enact or enforce any ordinance, resolution or rule regarding home loans that are subject to the Home Loan Protection Act or that, except for the delayed applicability date of Subsection A of this section, would otherwise be subject to that act.

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 449, AS AMENDED

CHAPTER 437

CHAPTER 437, LAWS 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CREATING THE ALBUQUERQUE-BERNALILLO WATER UTILITY AUTHORITY.

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

Section 1. WATER UTILITY AUTHORITY--CREATED--MEMBERSHIP--ADMINISTRATION OF UTILITY.--

A. The "Albuquerque-Bernalillo water utility authority" is created. The municipal members shall be three city councilors and the mayor and the county members shall be three county commissioners. The authority is a joint agency of the two governments and is subject to the state Procurement Code and other applicable state laws.

B. The authority shall administer the water and wastewater utility of Albuquerque and Bernalillo county, including the determination and imposition of rates for services.

C. All money received from rates, bonds or other sources shall be held in one or more accounts separate from other governmental accounts of the city or county.

D. All functions, appropriations, money, records, equipment and other real and personal property pertaining to the Albuquerque water and wastewater utility shall be transferred to the Albuquerque-Bernalillo water utility authority. Debts of the Albuquerque water and wastewater utility shall be debts of the Albuquerque-Bernalillo water utility authority. The authority shall not impair the rights of any bondholders of outstanding bonds of the Albuquerque water and wastewater utility. If there are outstanding bonds for which property taxes have been pledged, the authority shall issue revenue bonds to refund the bonds pledged by property taxes. All contractual obligations of the Albuquerque water and wastewater utility shall be binding on the authority. The public regulation commission shall audit the Albuquerque water and wastewater utility prior to the transfer of money, assets and debts to the Albuquerque-Bernalillo water utility authority.

SENATE CONSERVATION COMMITTEE SUBSTITUTE

FOR SENATE BILL 887, AS AMENDED

CHAPTER 438

CHAPTER 438, LAWS 2003

AN ACT

RELATING TO THE EXTRATERRITORIAL POWERS OF MUNICIPALITIES IN A CLASS A COUNTY WITH MORE THAN THREE HUNDRED THOUSAND PERSONS.

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

Section 1. Section 3-7-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-7-3) is amended to read:

"3-7-3. LIMITATION ON ANNEXATION.--No municipality may annex territory within the boundary of another municipality or territory within a class A county with a population of more than three hundred thousand persons unless approved by the board of county commissioners for that county."

Section 2. Section 3-7-17.1 NMSA 1978 (being Laws 1998, Chapter 42, Section 2) is amended to read:

"3-7-17.1. ANNEXATION--CERTAIN MUNICIPALITIES IN CLASS A COUNTIES--PROCEDURES--LIMITATIONS.--

A. A petition seeking the annexation of territory contiguous to a municipality located in a class A county with a population of less than three hundred thousand persons shall be presented to the city council and be accompanied by a map that shows the external boundary of the territory proposed to be annexed and the relationship of the territory proposed to be annexed to the existing boundary of the municipality.

B. If the petition is signed by the owners of a majority of the number of acres in the contiguous territory:

(1) the city council shall submit the petition to the board of county commissioners of the county in which the municipality is located for its review and comment. Any comments shall be submitted by the board of county commissioners to the city council within thirty days

of receipt; and

(2) not less than thirty days nor more than sixty days after receiving the petition, the city council shall by ordinance approve or disapprove the annexation after considering any comments submitted by the board of county commissioners.

C. Except as provided in Subsection D of this section, if the petition is not signed by the owners of a majority of the number of acres in the contiguous territory, the extraterritorial land use commission shall consider the matter and make a recommendation to the extraterritorial land use authority. The extraterritorial land use authority shall approve or disapprove the petition. If approved by the extraterritorial land use authority, the city council may by ordinance approve the annexation.

D. When the nonconsenting property owners' properties are entirely surrounded by consenting property owners, the city council may approve the annexation without approval or disapproval of the extraterritorial land use authority.

E. In considering an annexation pursuant to this section, the city council shall consider the impact of the annexation on existing county contracts and provisions of services, including fire protection, solid waste collection or water and sewer service, and may make agreements with the county to continue such services if it is in the interest of the county, the residents of the proposed annexed area or the municipality.

F. A municipality with a population over two hundred thousand persons and located in a class A county shall not force a resident or business located in the unincorporated area of the county to agree to annexation as a condition of extending sewer and water service to that person or business, if that sewer or water service extension is paid for all or in part by federal, state or county money. The municipality may make agreement to annexation a condition of extending sewer and water service if the extension of the service is paid for entirely with municipal money."

Section 3. Section 3-19-5 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-18-5, as amended) is amended to read:

"3-19-5. PLANNING AND PLATTING JURISDICTION.--

A. Each municipality shall have planning and platting jurisdiction within its municipal boundary. Except as provided in Subsection B of this section, the planning and platting jurisdiction of a municipality:

(1) having a population of twenty-five thousand or more persons includes all territory within five miles of its boundary and not within the boundary of another municipality; or

(2) having a population of fewer than twenty-five thousand persons includes all territory within three miles of its boundary and not within the boundary of another municipality.

B. A municipality located in a class A county with a population of more than three hundred thousand persons shall not have planning and platting jurisdiction in the unincorporated area of the county.

C. If territory not lying within the boundary of a municipality is within the planning and platting jurisdiction of more than one municipality, the planning and platting jurisdiction of each municipality shall terminate equidistant from the boundary of each municipality unless one municipality has a population of fewer than two thousand five hundred persons and another municipality has a population of more than two thousand five hundred persons according to the most recent census. Then the planning and platting jurisdiction of the municipality having the greatest population extends to such territory."

Section 4. Section 3-21-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-20-2, as amended) is amended to read:

"3-21-2. JURISDICTION OF A COUNTY OR MUNICIPAL ZONING AUTHORITY.--To carry out the purposes of Sections 3-21-1 through 3-21-14 NMSA 1978:

A. a county zoning authority may adopt a zoning ordinance applicable to all or any portion of the territory within the county that is not within the zoning jurisdiction of a municipality;

B. a municipal zoning authority may adopt a zoning ordinance applicable to the territory within the municipal boundaries and, if not within a class A county with a population of more than three hundred thousand persons according to the last federal decennial census, shall have concurrent authority with the county to zone all or any portion of the territory within its extraterritorial zoning jurisdiction that is within:

(1) two miles of the boundary of any municipality having a population of twenty thousand or more persons, provided such territory is not within the boundary of another municipality;

(2) one mile of the boundary of any municipality having a population of one thousand five hundred or more but less than twenty thousand persons, provided such territory is not within the boundaries of another municipality;

(3) the limits of the boundaries of a municipality having a population of one thousand five hundred persons or less; or

(4) territory not lying within the boundary of a municipality but within the extraterritorial jurisdiction of more than one municipality; provided that the extraterritorial zoning jurisdiction of each municipality shall terminate equidistant from the boundary of each municipality unless one municipality has a population according to the most recent federal decennial census of less than two thousand five hundred and another municipality has a population according to the most recent federal decennial census of more than two thousand five hundred, in which case the extraterritorial zoning jurisdiction of the municipality having the greatest population extends to such territory; and

(5) territory in addition to the extraterritorial zoning jurisdiction provided by Paragraphs (1), (2), (3) and (4) of this subsection that the governing bodies of a county and a municipality agree to place within the extraterritorial zoning jurisdiction of the municipality by agreement entered into pursuant to the provisions of the Joint Powers Agreements Act, provided such additional territory is not within the boundary of another municipality and is contiguous to the exterior boundaries of the territory within the extraterritorial zoning jurisdiction of the municipality;

C. concurrent authority shall be exercised pursuant to an extraterritorial zoning authority or joint powers agreement; provided, however, this authority may be exercised regardless of whether a county has enacted a comprehensive zoning ordinance; and

D. in the absence of a county zoning ordinance, a qualified elector may file a petition, signed by the qualified electors of the county equal in number to not less than twenty-five percent of the votes cast for the office of governor at the last preceding general election, seeking the adoption of a zoning ordinance by the county zoning authority. Within one year of the filing of the petition seeking the adoption of a county zoning ordinance, the board of county commissioners shall adopt a county zoning ordinance."

Section 5. Section 3-21-3.2 NMSA 1978 (being Laws 1998, Chapter 42, Section 5, as amended) is amended to read:

**"3-21-3.2. EXTRATERRITORIAL ZONING IN CLASS A COUNTIES--
PROCEDURES.--**

A. In a class A county in which a municipality is located that has a population of:

(1) more than three hundred thousand persons according to the last federal decennial census, there shall be no extraterritorial zoning; or

(2) three hundred thousand or fewer people, concurrent extraterritorial zoning jurisdiction between that municipality and the county may be determined by an "extraterritorial land use authority" pursuant to ordinances adopted by

the municipal and county governing bodies stating that the county or municipality will create an extraterritorial land use authority. The extraterritorial land use authority shall have the jurisdiction and powers of an extraterritorial zoning authority and shall carry out its duties related to planning and platting jurisdiction, extraterritorial zoning, subdivision approval and annexation approval or disapproval as provided in the Municipal Code. The extraterritorial land use authority shall consist of four county commissioners appointed by the board of county commissioners and three city councilors or two city councilors and the mayor appointed by the municipality. Alternates to the extraterritorial land use authority shall be appointed by the board of county commissioners from among the remaining county commissioners and by the municipality from among the remaining city councilors. The alternates shall be notified prior to a meeting of the extraterritorial land use authority if an appointed member cannot attend. When replacing a member, an alternate shall have the same duties, privileges and powers as other appointed members.

B. The extraterritorial zoning commission in a class A county shall be known as the "extraterritorial land use commission" if it is formed by a municipality and a class A county that have adopted ordinances pursuant to Paragraph (2) of Subsection A of this section stating that the county and municipality will create an extraterritorial land use authority.

C. The extraterritorial zoning commission shall be composed of five members of the county planning commission appointed by the board of county commissioners and five members of the environmental planning commission of the municipality appointed by the city council. Alternates to the extraterritorial land use commission shall be appointed by the board of county commissioners from the remaining members of the county planning commission and by the municipality from the remaining members of the environmental planning commission, who shall be notified prior to a meeting of the extraterritorial land use commission if an appointed member cannot attend. When replacing a member, the alternate shall have the same duties, privileges and powers as other appointed members.

D. The composition of the extraterritorial land use commission shall not affect the composition of any other extraterritorial zoning commission that may be established in that county with any other municipality.

E. The extraterritorial land use commission shall have the authority to carry out duties related to planning and platting jurisdiction, subdivision and extraterritorial zoning."

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

FOR SENATE BILL 241, AS AMENDED

CHAPTER 439

CHAPTER 439, LAWS 2003

AN ACT

RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT; AMENDING PROVISIONS REGARDING CONFIDENTIALITY OF TAX RETURNS AND OTHER INFORMATION; INCREASING THE SECRETARY OF TAXATION AND REVENUE'S ABATEMENT AUTHORITY; AMENDING PROVISIONS REGARDING INSTALLMENT PAYMENTS, REFUNDS, HEARINGS AND INTEREST.

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

Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for an employee of the department or a former employee of the department to reveal to an individual other than another employee of the department, information contained in the return of a taxpayer made pursuant to a law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about a taxpayer acquired as a result of his employment by the department and not available from public sources, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section to which the representative is subject;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information;

C. to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states that have met the requirements of Subsection A of this section;

D. to a district court, an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes to which the state is a party and in which the information sought is about a taxpayer who is

party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put his own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

E. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection D of this section;

F. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of that information is not otherwise prohibited by law;

G. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

H. with reference to information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-13 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

I. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which his transferor, assignor, seller or lessee is liable;

J. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

K. to a municipality of this state upon its request for a period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information

described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the municipality in question or the department;

L. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

M. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of the absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

N. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels received and deducted, and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico;

O. the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a rack operator, importer, blender, distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

P. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to

individuals other than employees of either the New Mexico department of agriculture or the department;

Q. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer;

R. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalties contained in Section 7-1-76 NMSA 1978;

S. to a county of this state that has in effect a local option gross receipts tax imposed by the county upon its request for a period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act

or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if the information is revealed to individuals other than other officers or employees of the county in question or the department;

T. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

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

(1) information for or relating to a period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

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

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

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the release of proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

V. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

W. to the public regulation commission, information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

X. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by race tracks;

Y. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use that information only to enforce the educational debt obligation of the absent obligors and shall not disclose that information or use it for any other purpose;

Z. a decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

AA. information required by a provision of the Tax Administration Act to be made available to the public by the department;

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

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

DD. to the national tax administration agencies of Mexico and Canada, provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute similar to this section;

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

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

GG. to the gaming control board, tax returns of license applicants and their affiliates as defined in Subsection E of Section 60-2E-14 NMSA 1978."

Section 2. Section 7-1-21 NMSA 1978 (being Laws 1965, Chapter 248, Section 23, as amended) is amended to read:

"7-1-21. INSTALLMENT PAYMENTS OF TAXES--INSTALLMENT AGREEMENTS.--

A. Whenever justified by the circumstances, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer in which the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments according to the terms of the agreement, but not for a period longer than sixty months. No installment agreement shall prevent the accrual of interest otherwise provided by law.

B. The agreement provided for in this section is to be known as an "installment agreement". If entered into after a court acquires jurisdiction over the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. At the time of entering into an installment agreement, the secretary shall require the affected taxpayer or person to furnish security for payment of the taxes admitted to be due according to the terms of the agreement, but if the taxpayer does not provide security, the secretary shall cause a notice of lien to be filed in accordance with the provisions of Section 7-1-38 NMSA 1978, and when so filed it shall constitute a lien upon all the property or rights to property of the taxpayer in that county in the same manner as in the case of the lien provided for in Section 7-1-37 NMSA 1978.

D. An installment agreement is conclusive as to liability for payment of the amount of taxes specified therein but does not preclude the assessment of any additional tax.

E. After entering into the agreement, except in unusual circumstances as require the secretary in his discretion to take further action to protect the interests of the state, no further attempts to enforce payment of the tax by levy or injunction shall be made; however, if installment payments are not made on or before the times specified in the agreement, if any other condition contained in the agreement is not met or if the taxpayer does not make payment of all other taxes for which he becomes liable as they are due, the secretary may proceed to enforce collection of the tax as if the agreement had not been made or may proceed, as provided in Section 7-1-54 NMSA 1978, against the security furnished.

F. Records of installment agreements in excess of one thousand dollars (\$1,000) shall be available for inspection by the public. The department shall keep the records for a minimum of three years from the date of the installment agreement."

Section 3. Section 7-1-28 NMSA 1978 (being Laws 1965, Chapter 248, Section 30, as amended) is amended to read:

"7-1-28. AUTHORITY FOR ABATEMENTS OF ASSESSMENTS OF TAX.--

A. In response to a written protest against an assessment, submitted in accordance with the provisions of Section 7-1-24 NMSA 1978, but before any court acquires jurisdiction of the matter, or when a "notice of assessment of taxes" is incorrect, the secretary or the secretary's delegate, with prior written approval of the attorney general, may abate any part of an assessment determined by the secretary or the secretary's delegate to have been incorrectly, erroneously or illegally made, except that the secretary or the secretary's delegate may make abatements:

(1) with respect 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, abatements of gasoline tax made under Section 7-13-17 NMSA 1978 and abatements of cigarette tax made under the Cigarette Tax Act without the prior approval of the attorney general regardless of the amount;

(2) with respect to the Corporate Income and Franchise Tax Act amounting to less than twenty thousand dollars (\$20,000) without prior approval of the attorney general; and

(3) amounting to less than ten thousand dollars (\$10,000) without the prior written approval of the attorney general.

B. Pursuant to the final order of the district court for Santa Fe county, the court of appeals, the supreme court of New Mexico or any federal court, from which order, appeal or review is not successfully taken by the department, adjudging that any person is not required to pay any portion of tax assessed to that person, the secretary or the secretary's delegate shall cause that amount of the assessment to be abated.

C. Pursuant to a compromise of taxes agreed to by the secretary and according to the terms of the closing agreement formalizing the compromise, the secretary or the secretary's delegate shall cause the abatement of the appropriate amount of any assessment of tax.

D. The secretary or the secretary's delegate shall cause the abatement of the amount of an assessment of tax that is equal to the amount of fee paid to or retained by an out-of-state attorney or collection agency from a judgment or the amount collected by the attorney or collection agency pursuant to Section 7-1-58 NMSA 1978.

E. Records of abatements made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the abatement."

Section 4. Section 7-1-29 NMSA 1978 (being Laws 1965, Chapter 248, Section 31, as amended) is amended to read:

"7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

A. In response to a claim for refund made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize the refund to a person of the amount of any overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A refund of tax and interest erroneously paid and amounting to more than ten thousand dollars (\$10,000) may be made to a person only with the prior approval of the attorney general, except that the secretary or the secretary's delegate may make refunds with respect to:

(1) 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, Section 7-13-17 NMSA 1978 and the Cigarette Tax Act without the prior approval of the attorney general regardless of the amount; and

(2) the Corporate Income and Franchise Tax Act amounting to less than twenty thousand dollars (\$20,000) without the prior approval of the attorney general.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or a federal court, from which order, appeal or review is not successfully taken, adjudging that a person has made an overpayment of tax, the secretary shall authorize the refund to the person of the amount thereof.

C. In the discretion of the secretary, any amount of tax to be refunded may be offset against any amount of tax for which the person due to receive the refund is liable.

D. In an audit by the department or a managed audit covering multiple reporting periods where both underpayments and overpayments of a tax have been made in different reporting periods, the department shall credit the tax overpayments against the underpayments, provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was

credited against an underpayment, whichever is later. If the overpayments credited pursuant to this section exceed the underpayments of a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. When a taxpayer makes a payment identified to a particular return or assessment, and the department determines that the payment exceeds the amount due pursuant to that return or assessment, the secretary may apply the excess to the taxpayer's other liabilities under the tax acts to which the return or assessment applies, without requiring the taxpayer to file a claim for a refund. The liability to which an overpayment is applied pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was applied, whichever is later.

F. If the department determines, upon review of an original or amended income tax return, corporate income and franchise tax return, estate tax return, special fuels excise tax return or oil and gas tax return, that there has been an overpayment of tax for the taxable period to which the return or amended return relates in excess of the amount due to be refunded to the taxpayer under the provisions of Subsection J of Section 7-1-26 NMSA 1978, the department may refund that excess amount to the taxpayer without requiring the taxpayer to file a refund claim.

G. Records of refunds made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund."

Section 5. Section 7-1-53 NMSA 1978 (being Laws 1965, Chapter 248, Section 55, as amended) is amended to read:

"7-1-53. ENJOINING DELINQUENT TAXPAYER FROM CONTINUING IN BUSINESS.--

A. To ensure or to compel payment of taxes and to aid in the enforcement of the provisions of the Tax Administration Act, the secretary may apply to a district court of this state to have any delinquent taxpayer or person who may be or may become liable for payment of any tax enjoined from engaging in business until the delinquent taxpayer ceases to be a delinquent taxpayer or until the delinquent taxpayer or person complies with other requirements, reasonably necessary to protect the revenues of the state, placed on the delinquent taxpayer or person by the secretary.

B. Upon application to a court for an injunction against a delinquent taxpayer, the court may forthwith issue an order temporarily restraining the delinquent taxpayer from doing business. The court shall hear the matter within fifteen days. Upon written request of the taxpayer, the hearing may be held earlier. Upon a showing by a preponderance of the evidence that the taxpayer is delinquent and has been given notice of the hearing as required by law, the court may enjoin the taxpayer from engaging in business in New Mexico until the taxpayer ceases to be a delinquent

taxpayer. Upon issuing an injunction, the court may also order the business premises of the taxpayer sealed by the sheriff and may allow the taxpayer access thereto only upon approval of the court.

C. Upon application to a court for an injunction against a person other than a delinquent taxpayer, the court:

(1) may issue an order temporarily restraining the person other than the delinquent taxpayer from engaging in business;

(2) shall hear the matter within fifteen days, except that the hearing may be held earlier if requested in writing by the person who is the subject of the temporary restraining order; and

(3) may without delay issue an injunction to the taxpayer in terms commanding the person who is the subject of the temporary restraining order to refrain from engaging in business until that person complies in full with the demand of the department to furnish security, if there is a showing that:

(a) the person who is the subject of the temporary restraining order has been given notice of the hearing for the injunction as required by law;

(b) a demand by the department has been made upon the taxpayer to furnish security;

(c) the taxpayer has not furnished security; and

(d) the secretary considers the collection from the person primarily responsible for the total amount of tax due or reasonably expected to become due to be in jeopardy.

D. A temporary restraining order or injunction shall not issue by provision of this section against any person who has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978. Upon a showing to the court by any person against whom a temporary restraining order or writ of injunction has issued by provision of this section that that person has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978, the court shall dissolve or set aside the temporary restraining order or injunction."

Section 6. Section 7-1-68 NMSA 1978 (being Laws 1965, Chapter 248, Section 69, as amended) is amended to read:

"7-1-68. INTEREST ON OVERPAYMENTS.--

A. As provided in this section, interest shall be allowed and paid on the amount of tax overpaid by a person that is subsequently refunded or credited to that person.

B. Interest on overpayments of tax shall accrue and be paid at the rate of fifteen percent a year, computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall apply to amounts due under the compact or other agreement.

C. Unless otherwise provided by this section, interest on an overpayment not arising from an assessment by the department shall be paid from the date of the claim for refund until a date preceding by not more than thirty days the date of the credit or refund to any person; interest on an overpayment arising from an assessment by the department shall be paid from the date of overpayment until a date preceding by not more than thirty days the date of the credit or refund to any person.

D. No interest shall be allowed or paid with respect to an amount credited or refunded if:

(1) the amount of interest due is less than one dollar (\$1.00);

(2) the credit or refund is made within:

(a) fifty-five days of the date of the claim for refund of income tax, pursuant to either the Income Tax Act or the Corporate Income and Franchise Tax Act for the tax year immediately preceding the tax year in which the claim is made; or

(b) seventy-five days of the date of the claim for refund of gasoline tax to users of gasoline off the highways;

(3) the credit or refund is made within one hundred twenty days of the date of the claim for refund of income tax, pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act, for any tax year more than one year prior to the year in which the claim is made;

(4) Sections 6611(f) and 6611(g) of the Internal Revenue Code, as those sections may be amended or renumbered, prohibit payment of interest for federal income tax purposes;

(5) the credit or refund is made within sixty days of the date of the claim for refund of any tax other than income tax;

(6) the credit results from overpayments found in an audit of multiple reporting periods and applied to underpayments found in that audit or refunded as a net overpayment to the taxpayer pursuant to Section 7-1-29 NMSA 1978;

(7) the department applies the credit or refund to an intercept program, to the taxpayer's estimated payment prior to the due date for the estimated payment, or to offset prior liabilities of the taxpayer pursuant to Subsection E of Section 7-1-29 NMSA 1978; or

(8) the credit or refund results from overpayments the department finds pursuant to Subsection F of Section 7-1-29 NMSA 1978 that exceed the refund claimed by the taxpayer on the return.

E. Nothing in this section shall be construed to require the payment of interest upon interest."

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HOUSE BILL 283, AS AMENDED

2003 STATE OF NEW MEXICO ROSTER

CONGRESSIONAL, STATE, LEGISLATIVE,

DISTRICT & COUNTY OFFICIALS

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Santa Fé 87505 (505) 984-8950

Rio Rancho City Hall, 3900 Southern Blvd. SE, Rm. 105-A

Rio Rancho 87124 (505) 994-0499

Gallup Municipal Bldg., 110 W. Aztec

Gallup 87301 (505) 863-0582

Farmington City Hall, 800 Municipal Dr.

Farmington 87401 (505) 324-1005

Clovis City Hall, 321 N. Connelly St.

Clovis 88101 (505) 763-7616

STATE OFFICIALS

Term/Phone

GOVERNOR

Bill Richardson (D) 2003-2006

State Capitol, Rm. 400, Santa Fé 87503 476-2200

LT. GOVERNOR

Diane D. Denish (D) 2003-2006
State Capitol, Rm. 417, Santa Fé 87503 827-3050

SECRETARY OF STATE

Rebecca Vigil-Giron (D) 2003-2006
325 Don Gaspar, Ste. 300, Santa Fé 87503 827-3600

STATE AUDITOR

Domingo P. Martinez (D) 2003-2006
2113 Warner Cir., Santa Fé 87505-5499 827-3500

STATE TREASURER

Robert E. Vigil (D) 2003-2006
2019 Galisteo Bldg. K, Santa Fé 87505 955-1120

ATTORNEY GENERAL

Patricia A. Madrid (D) 2003-2006
Bataan Memorial Bldg., Rm. 260, Santa Fé 87504-1508 827-6000

COMMISSIONER OF PUBLIC LANDS

Patrick H. Lyons (R) 2003-2006
State Land Office Bldg., Rm. 102, Santa Fé 87501 827-5760

JUSTICES OF THE SUPREME COURT

P.O. Box 848, Santa Fé, New Mexico 87504-0848

Telephone	Term
Petra J. Maes (D), Chief Justice 827-4883	2003-2010
Pamela B. Minzner (D), Justice 827-4889	2003-2010
Patricio M. Serna (D), Justice 827-4886	2001-2008
Richard C. Bosson (D), Justice 827-4892	*2003-2004
Edward L. Chavez (D), Justice 827-4880	**2003-2006

Kathleen Jo Gibson, Esq., Chief Clerk

P.O. Box 848, Santa Fé, New Mexico 87504-0848

827-4860

JUDGES OF THE COURT OF APPEALS

P.O. Box 2008, Santa Fé, New Mexico 87504-2008

Telephone	Term		
		James J. Wechsler (D), Chief Judge	841-4609 1999-2006
		A. Joseph Alarid (D), Judge	841-4611 2001-2008
		Lynn Pickard (D), Judge	827-4903 1999-2006
		Michael D. Bustamante (D), Judge	841-4650 2003-2010
		Jonathan B. Sutin (R), Judge	841-4609 2001-2008
		Cynthia A. Fry (D), Judge	841-4626 *2001-2006
		Celia Foy Castillo (D), Judge	523-8261 2003-2010
		Ira Robinson (D), Judge	827-4909 2001-2008
		Roderick T. Kennedy (R), Judge	827-4911 *2002-2004
		Michael E. Vigil (D), Judge	827-4906 **2003-2004

Patricia C. Rivera Wallace, Esq., Chief Appellate Court Clerk

P.O. Box 2008, Santa Fé, New Mexico 87504-2008

827-4925

* Elected to fill unexpired term.

* *Appointed to serve until next general election.

PUBLIC REGULATION COMMISSION

DISTRICT 1 Term/Phone

Bernalillo

Herb H. Hughes (R) 2001-2004

P.O. Drawer 1269, Santa Fé 87504-1269 827-8015

DISTRICT 2

Bernalillo, Chaves, Curry, De Baca, Doña Ana, Eddy, Guadalupe, Lea, Lincoln, Otero, Quay, Roosevelt, Santa Fé & Torrance

David W. King (R) 2003-2006

P.O. Drawer 1269, Santa Fé 87504-1269 827-4531

DISTRICT 3

Bernalillo, Colfax, De Baca, Guadalupe, Harding, Los Alamos, Mora, Rio Arriba, San Miguel, Sandoval, Santa Fé, Taos & Union

Jerome D. Block (D) 2001-2004

P.O. Drawer 1269, Santa Fé 87504-1269 827-4533

DISTRICT 4

Bernalillo, Cibola, McKinley, Rio Arriba, San Juan, Sandoval, Santa Fé, Socorro & Valencia

Lynda M. Lovejoy (D) 2003-2006

P.O. Drawer 1269, Santa Fé 87504-1269 827-8019

DISTRICT 5

Catron, Dona Ana, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra, Socorro, Torrance & Valencia

E. Shirley Baca (D) 2003-2006

P.O. Drawer 1269, Santa Fé 87504-1269 827-8020

LEGISLATIVE LEADERSHIP

SENATE

Officers for

DEMOCRATS REPUBLICANS

Richard M. Romero

President Pro Tempore

Manny M. Aragon Stuart Ingle

Majority Floor Leader Minority Floor Leader

Mary Jane M. Garcia Leonard Lee Rawson

Majority Whip Minority Whip

Linda M. Lopez Dianna J. Duran

Majority Caucus Chair Minority Caucus Chair

Margaret Larragoite, Chief Clerk

State Capitol, Rm. 115

986-4714

Orlando Vigil, *Sergeant at Arms*

HOUSE OF REPRESENTATIVES

Officers for

DEMOCRATS REPUBLICANS

Ben Lujan

Speaker of the House

Danice Picraux Ted Hobbs

Majority Floor Leader *Minority Floor Leader*

James G. Taylor Joseph M. Thompson

Majority Whip *Minority Whip*

John A. Heaton Terry T. Marquardt

Majority Caucus Chair *Minority Caucus Chair*

Stephen R. Arias, Chief Clerk

State Capitol, Rm. 203

986-4751

Gilbert Baca, *Sergeant at Arms*

Party Composition of New Mexico Legislature

Democratic State Senators.....24

Republican State Senators.....18

Democratic State Representatives.....43

Republican State Representatives.....27

Legislative Council Service

State Capitol, Rm. 411

Santa Fé, NM 87503

STATE SENATORS

	1	San Juan	William E. Sharer (R)
		Box 203, Farmington 87499	2001-2004
	2	San Juan	Allen V. Hurt (R)
		Box 639, Waterflow, 87421	2001-2004
†	3	McKinley & San Juan	John Pinto (D)
		Box 163, Tohatchi 87325	2001-2004
†	4	Cibola & McKinley	Lidio G. Rainaldi (D)
		1101 Martinelli, Gallup 87301	2001-2004
†	5	Los Alamos, Rio Arriba & Santa Fé	Richard C. Martinez (D)
		Box 934, Espanola 87532	2001-2004
†	6	Los Alamos, Rio Arriba, Santa Fé, Taos	Carlos R. Cisneros (D)
		Box 1129, Questa 87556	2001-2004
†	7	Colfax, Curry, Harding, Quay, San Miguel, Taos, & Union	Clinton D. Harden, Jr. (R)
		1348 CRH, Clovis 88101	**2002-2004
†	8	Guadalupe, Mora, San Miguel, Santa Fé & Torrance	Pete Campos (D)
		500 Reynolds Ave., Las Vegas 87701	2001-2004
	9	Sandoval	Steve Komadina (R)
		Box 2085, Corrales 87048	2001-2004
†	10	Bernalillo & Sandoval	Ramsay L. Gorham (R)
		805 Salamanca NW, Albuquerque 87107	2001-2004
	11	Bernalillo	Linda M. Lopez (D)
		9132 Suncrest SW, Albuquerque 87121	2001-2004
	12	Bernalillo	Richard M. Romero (D)
		907 Silver Ave. SW, Albuquerque 87102	2001-2004
	13	Bernalillo	Dede Féldman (D)

1821 Meadowview NW, Albuquerque 87104 2001-2004

† 14 Bernalillo & Valencia Manny M. Aragon (D)
Drawer Z, Albuquerque 87103 2001-2004

15 Bernalillo H. Diane Snyder (R)
7006 Elna Crt. NE, Albuquerque 87110 2001-2004

16 Bernalillo Cisco McSorley (D)
1200 Pennsylvania, NE, Albuquerque 87110 2001-2004

17 Bernalillo Shannon Robinson (D)
716 Indiana SE, Albuquerque 87108 2001-2004

18 Bernalillo Mark Boitano (R)
4108 Asper Ct. NE, Albuquerque 87111 2001-2004

† 19 Bernalillo, Sandoval, Santa Fé & Torrance Sue F. Wilson Beffort (R)
1516 Gray Rock Pl., NE, Albuquerque 87112 2001-2004

20 Bernalillo William H. Payne (R)
Box 14823, Albuquerque 87191 2001-2004

† 21 Bernalillo & Sandoval Kent L. Cravens (R)
10717 Richfield Ave. NE, Albuquerque 87122 2001-2004

† 22 Bernalillo, Cibola, McKinley
Rio Arriba & Sandoval Leonard Tsosie (D)
Box 1003, Crownpoint 87313 2001-2004

† 23 Bernalillo & Sandoval Joseph J. Carraro (R)
10216 Carraro Pl. NW, Albuquerque 87114 2001-2004

24 Santa Fé Nancy Rodriguez (D)
1838 Camino La Canada, Santa Fé 87501 2001-2004

25 Santa Fé Roman M. Maes III (D)
1488B St. Francis Drive, Santa Fé 87501 2001-2004

26 Bernalillo Bernadette M. Sanchez (D)

7712 Ranchwood NW, Albuquerque 87120 2001-2004

† 27 Chaves, Curry, De Baca & Roosevelt Stuart Ingle (R)
2106 W. University Dr., Portales 88130 2001-2004

† 28 Catron, Grant & Socorro Ben D. Altamirano (D)
1123 Santa Rita St., Silver City 88061 2001-2004

29 Valencia Michael S. Sanchez (D)
3 Bunton Road, Belen 87002 2001-2004

† 30 Cibola, Socorro & Valencia Joseph A. Fidel (D)
Box 968, Grants 87020 2001-2004

31 Doña Ana Cynthia Nava (D)
3002 Broadmoor, Las Cruces 88001 2001-2004

† 32 Chaves, Eddy, Lincoln & Otero Timothy Z. Jennings (D)
Box 1797, Roswell 88202 2001-2004

† 33 Chaves & Lincoln Rod Adair (R)
Box 96, Roswell 88202 2001-2004

† 34 Eddy & Otero Don Kidd (R)
Box 1358, Carlsbad 88221 2001-2004

† 35 Hidalgo, Luna & Sierra John Arthur Smith (D)
Box 998, Deming 88031 2001-2004

36 Doña Ana Mary Jane M. Garcia (D)
Box 22, Doña Ana 88032 2001-2004

† 37 Doña Ana & Sierra Leonard Lee Rawson (R)
Box 996, Las Cruces 88004 2001-2004

38 Doña Ana Mary Kay Papen (D)
904 Conway, Las Cruces 88005 2001-2004

† 39 Los Alamos, Mora, Sandoval, San Miguel, Santa Fé & Taos Phil A. Griego (D)
Box 10, San Jose 87565 2001-2004

- † 40 Doña Ana & Otero Dianna J. Duran (R)
 909 Eighth St., Tularosa 88352 2001-2004
- † 41 Eddy & Lea Carroll H. Leavell (R)
 Drawer D, Jal 88252 2001-2004
- † 42 Chaves, Curry, Eddy, Lea & Roosevelt Gay Gottshall Kernan (R)
 613 Zia, Hobbs 88240 **2002-2004

† Multi-County District

* Elected to fill unexpired term.

* *Appointed to serve until next general election.

STATE REPRESENTATIVES

- 1 San Juan Thomas C. Taylor (R)
 5909 Rinconada, Farmington 87402 2003-2004
- 2 San Juan Nick Tinnin (R)
 217 East Comanche, Farmington 87401 2003-2004
- 3 San Juan Sandra L. Townsend (R)
 P.O. Box 1292, Aztec 87410 2003-2004
- 4 San Juan Ray Begaye (D)
 P.O. Box 609, Shiprock 87420 2003-2004
- † 5 McKinley & San Juan Irvin Harrison (D)
 501 S. Patton, Gallup 87031 2003-2004
- † 6 Cibola & McKinley George J. Hanosh (D)
 P.O. Box 1299, Grants 87020 2003-2004
- 7 Valencia Kandy Cordova (D)
 613 Frederico Blvd., Belen 87002 2003-2004
- 8 Valencia Fred Luna (D)
 1651 Los Lentos NE, Los Lunas 87031 2003-2004
- † 9 McKinley & San Juan Patricia "Patty" Lundstrom(D)

3406 Bluehill Ave., Gallup 87301 2003-2004

† 10 Bernalillo & Valencia Henry "Kiki" Saavedra (D)
2838 2nd St. SW, Albuquerque 87102 2003-2004

11 Bernalillo Rick Miera (D)
1011 Forrester NW, Albuquerque 87102 2003-2004

12 Bernalillo James G. Taylor (D)
3909 Camino Del Valle SW, Albuquerque 87105 2003-2004

13 Bernalillo Daniel P. Silva (D)
1323 Canyon Trail SW, Albuquerque 87105 2003-2004

14 Bernalillo Miguel P. Garcia (D)
1118 La Font Rd. SW, Albuquerque 87105 2003-2004

15 Bernalillo Teresa A. Zanetti (R)
1112 Salamanca, NW Albuquerque 87107 2003-2004

16 Bernalillo Raymond M. Ruiz (D)
4901 El Aguila NW, Albuquerque 87120-1009 2003-2004

17 Bernalillo Edward C. Sandoval (D)
5102 12th St. NW, Albuquerque 87107 2003-2004

18 Bernalillo Gail C. Beam (D)
425 Aliso Dr. NE, Albuquerque 87108 2003-2004

19 Bernalillo Sheryl M. Williams Stapleton (D)
P.O. Box 25385, Albuquerque 87125 2003-2004

20 Bernalillo Ted Hobbs (R)
1415 Catron Ave. SE, Albuquerque 87123 2003-2004

21 Bernalillo Mimi Stewart (D)
313 Moon NE, Albuquerque 87123 2003-2004

† 22 Bernalillo, Sandoval & Santa Fé Ron Godbey (R)
P.O. Box 1488, Cedar Crest 87008 2003-2004

† 23 Bernalillo & Sandoval Eric A. Youngberg (R)
47 W. Val Verde, Corrales 87048 2003-2004

24 Bernalillo Janice E. Arnold-Jones (R)
7713 Sierra Azul, NE, Albuquerque 87110 2003-2004

25 Bernalillo Danice R. Picraux (D)
4308 Avenida La Resolana NE, Albuquerque 87110 2003-2004

26 Bernalillo Al Park (D)
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27 Bernalillo Lorenzo A. Larrañaga (R)
7716 Lamplighter NE, Albuquerque 87109 2003-2004

28 Bernalillo Rory Ogle (R)
2500 Algodones, NE, Albuquerque 87112-1809 2003-2004

29 Bernalillo Thomas Anthony Anderson (R)
10013 Plunkett Dr., NW Albuquerque 87114 2003-2004

30 Bernalillo Robert W. White (R)
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31 Bernalillo Joseph M. Thompson (R)
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32 Luna Dona G. Irwin (D)
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33 Doña Ana J. Paul Taylor (D)
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34 Doña Ana Mary Helen Garcia (D)
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35 Doña Ana Antonio Lujan (D)
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36 Doña Ana Andrew "Andy" Nuñez (D)

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37 Doña Ana William Ed Boykin (R)
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† 39 Hidalgo & Grant Manuel G. Herrera (D)
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† 40 Mora, Rio Arriba, San Miguel, Santa Fé & Taos Nick L. Salazar (D)
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† 41 Rio Arriba, Sandoval & Taos Debbie A. Rodella (D)
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42 Taos Roberto "Bobby" J. Gonzales (D)
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† 43 Los Alamos, Sandoval & Santa Fé Jeannette O. Wallace (R)
1913 Spruce St., Los Alamos 87544 2003-2004

44 Sandoval Jane E. Powdrell-Culbert (R)
114 Richard Rd., Corrales, 87408 2003-2004

45 Santa Fé Jim R. Trujillo (D)
1901 Morris Place, Santa Fé 87505 **2003-2004

46 Santa Fé Ben Lujan (D)
Rt. 1, Box 102, Santa Fé 87506 2003-2004

47 Santa Fé Max Coll (D)
1430 Canyon Rd. Santa Fé 87501-6134 2003-2004

48 Santa Fé Luciano "Lucky" Varela (D)
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† 49 Catron, Socorro & Valencia Don Tripp (R)
P.O. Box 1369, Socorro 87801 2003-2004

† 50 Torrance, Bernalillo & Santa Fé Rhonda S. King (D)
P.O. Box 6, Stanley 87056 2003-2004

51 Otero Gloria C. Vaughn (R)
503 E. 16th St., Alamogordo 88310 2003-2004

52 Doña Ana Joseph Cervantes (D)
2610 S. Espina, Las Cruces 88001 2003-2004

† 53 Otero & Doña Ana Terry T. Marquardt (R)
2474 Desert Hills, Alamogordo 88310 2003-2004

† 54 Eddy & Otero Joe M Stell (D)
22 Colwell Ranch Rd., Carlsbad 88220 2003-2004

55 Eddy John A. Heaton (D)
102 S. Canyon, Carlsbad 88220 2003-2004

† 56 Lincoln & Otero Dub Williams (R)
HC 66, Box 10, Glencoe 88324 2003-2004

† 57 Chaves, Lincoln & Otero Daniel Foley (R)
P.O. Box 3194, Roswell 88202 2003-2004

58 Chaves Pauline J. Ponce (D)
1020 S. Mulberry, Roswell 88201 2003-2004

† 59 Chaves, Lincoln & Otero Avon W. Wilson (R)
P.O. Box 381, Roswell 88202-0381 2003-2004

60 Sandoval Thomas E. Swisstack (D)
2625 Bogie Rd., Rio Rancho 87124 2003-2004

61 Lea Donald L. Whitaker (D)
P.O. Box 974, Eunice 88231 2003-2004

62 Lea Donald E. Bratton (R)
2012 N. McKinley, Hobbs 88240 2003-2004

† 63 Curry, De Baca, Guadalupe & Roosevelt Jose A. Campos, II (D)

1050 S. 10th St., Santa Rosa 88435 2003-2004

64 Curry Anna M. Crook (R)

1041 Fairway Terrace, Clovis 88101 2003-2004

† 65 Bernalillo, Rio Arriba, McKinley & Sandoval James Roger Madalena (D)

P.O. Box 255, Jemez Pueblo 87024 2003-2004

† 66 Chaves, Eddy, Lea & Roosevelt Earlene Roberts (R)

P.O. Box 39, Lovington 88260 2003-2004

† 67 Curry, Harding, Quay, Roosevelt, San Miguel & Union Brian K. Moore (R)

P.O. Box 56, Clayton 88415 2003-2004

† 68 Colfax, Guadalupe, Mora, San Miguel & Taos Bengie Regensberg (D)

P.O. Box 246, Cleveland 87715 2003-2004

† 69 Cibola, McKinley & San Juan W. Ken Martinez (D)

P.O. Box 730, Grants 87020 2003-2004

† 70 San Miguel & Torrance Richard D. Vigil (D)

P.O. Box 456, Ribera 87560 2003-2004

† Multi-County Districts

* Elected to fill unexpired term.

* *Appointed to serve until next general election.

DISTRICT JUDGES

Telephone	Term
FIRST JUDICIAL DISTRICT	
Santa Fé, Los Alamos & Rio Arriba	
Barbara J. Vigil (D)	827-4195 2003-2008
Div. I, Santa Fé	
Jim Hall (D)	827-5044 2003-2008
Div. II, Santa Fé	
Carol J. Vigil (D)	827-5083 2003-2008

Div. III, Santa Fé

Michael Vigil (D) 827-5053 2003-2008

Div. IV, Santa Fé

Timothy L. Garcia (D) 827-5059 2003-2008

Div. V, Santa Fé

Steve D. Pfeffer (D) 827-5047 2003-2008

Div. VI, Santa Fé

Daniel A. Sanchez (D) 827-5056 2003-2008

Div. VII, Santa Fé

District Court Clerk

William J. Parras 827-5042

P.O. Box 2268, Santa Fé 87504-2268

SECOND JUDICIAL DISTRICT

Bernalillo

Marie A. Baca (D) 841-7602 **2003-2008

Div. I, Albuquerque

James F. Blackmer (R) 841-7519 2003-2008

Div. II, Albuquerque

Tommy Jewell (D) 841-7392 2003-2008

Div. III, Albuquerque

Frank Allen, Jr. (D) 841-7456 2003-2008

Div. IV, Albuquerque

Ted C. Baca (D) 841-7522 2003-2008

Div. V, Albuquerque

Neil C. Candelaria (R) 841-7484 2003-2008

Div. VI, Albuquerque

Dan Schneider (R) 841-7494 2003-2008

Div. VII, Albuquerque

Ross C. Sanchez (D) 841-7476 2003-2008

Div. VIII, Albuquerque

Mark A. Macaron (R) 841-7480 2003-2008

Div. IX, Albuquerque

Theresa Baca (D) 841-7512 2003-2008

Div. X, Albuquerque

Ernesto J. Romero (D) 841-7502 2003-2008

Div. XI, Albuquerque

Wendy E. York (D) 841-7434 2003-2008

Div. XII, Albuquerque

Robert H. Scott (R) 841-7529 2003-2008

Div. XIII, Albuquerque

W. John Brennan (D) 841-7499 2003-2008

Div. XIV, Albuquerque

Richard J. Knowles (R) 841-7474 2003-2008

Div. XV, Albuquerque

Robert L. Thompson (D) 841-7515 2003-2008

Div. XVI, Albuquerque

Nan Nash (D) 841-7531 **2003-2008

Div. XVII, Albuquerque

Susan M. Conway (D) 841-7536 2003-2008

Div. XVIII, Albuquerque

Albert S. "Pat" Murdoch (D) 841-7537 2003-2008

Div. XIX, Albuquerque

William F. Lang (D) 841-7562 2003-2008

Div. XX, Albuquerque

Angela Jewell (D) 841-6748 2003-2008

Div. XXI, Albuquerque

Deborah Davis Walker (D) 841-6778 2003-2008

Div. XXII, Albuquerque

Geraldine E. Rivera (R) 841-7311 2003-2008

Div. XXIII, Albuquerque

District Court Clerk

Bennina G. Armijo-Sisneros 841-7425

P.O. Box 488, Albuquerque 87103

THIRD JUDICIAL DISTRICT

Doña Ana

Robert E. Robles (D) 523-8225 2003-2008

Div. I, Las Cruces

Stephen Bridgforth (D) 523-8230 2003-2008

Div. II, Las Cruces

Lou Martinez (D) 523-8220 2003-2008

Div. III, Las Cruces

Jerald A. Valentine (D) 523-8235 2003-2008

Div. IV, Las Cruces

Sylvia E. Cano-Garcia (R) 523-8240 2003-2008

Div. V, Las Cruces

Grace Duran (D) 523-8292 2003-2008

Div. VI, Las Cruces

District Court Clerk

Nadine Sanchez 523-8200

201 W. Picacho, Ste. A, Las Cruces 88005

FOURTH JUDICIAL DISTRICT

Guadalupe, Mora & San Miguel

Eugenio S. Mathis (D) 425-7131 2003-2008

Div. I, Las Vegas

Jay Gwynne Harris (D) 425-3900 2003-2008

Div. II, Las Vegas

District Court Clerk

Macie D. Rogers, Court Administrator 425-7281

P.O. Box 1540, Las Vegas 87701

Georgia Gomez 472-3888

Guadalupe County Courthouse, Ste. 5,

Santa Rosa 88435

FIFTH JUDICIAL DISTRICT

Lea, Eddy & Chaves

Jay W. Forbes (D) 885-4828 2003-2008

Div. I, Carlsbad

Alvin F. Jones (D) 625-2411 2003-2008

Div. II, Roswell

William A. McBee (R) 396-8573 2003-2008

Div. III, Lovington

Don Maddox (R) 396-4430 2003-2008

Div. IV, Lovington

James L. Shuler (D) 887-7101 2003-2008

Div. V, Carlsbad

William P. Lynch (D) 624-0859 2003-2008

Div. VI, Roswell

Gary Clingman (R) 396-4768 2003-2008

Div. VII, Lovington

Charles C. Currier, III (R) 622-0536 2003-2008

Div. VIII, Roswell

District Court Clerks

Jean Willis, Court Administrator 622-2565

P.O. Box 1776, Roswell 88202-1776

Bee J. Clem 622-2212

P.O. Box 1776, Roswell 88201

Eleanor Jarnagin 885-4740

102 N. Canal, Ste. 240, Carlsbad 88220

Janie G. Hernandez 396-8571

100 N. Main, Lovington 88260

SIXTH JUDICIAL DISTRICT

Grant, Hidalgo & Luna

Henry R. Quintero Sr. (D) 538-2975 **2003-2008

Div. I, Silver City

Gary M. Jeffreys (R) 546-2344 2003-2008

Div. II, Deming

District Court Clerks

Dennis Estrada, Court Administrator 546-9611

P.O. Box 608, Lordsburg 88045

Velia C. Miranda 538-3250

P.O. Box 2339, Silver City 88062

Patricia K. Williams 542-3411

P.O. Box 608, Lordsburg 88045

Rosa Salaiz 546-9611

Luna County Courthouse, Rm. 40, Deming 88030

SEVENTH JUDICIAL DISTRICT

Catron, Sierra, Socorro & Torrance

Edmund H. Kase III (D) 835-0050 2003-2008

Div. I, Socorro

Thomas G. Fitch (R) 835-0050 2003-2008

Div. II, Socorro

Kevin R. Sweazea (R) 835-0050 2003-2008

Div. III, Socorro

District Court Clerks

Kim C. Padilla, Court Administrator 835-0050

P.O. Drawer 1129, Socorro 87801

Kathy McClean 894-7167

311 Date St., T. or C. 87901

Viola Lueras 384-2974

P.O. Box 78, Estancia 87016

EIGHTH JUDICIAL DISTRICT

Colfax, Union & Taos

Peggy Nelson (D) 758-4547 2003-2008

Div. I, Taos

Sam B. Sanchez (D) 445-5584 2003-2008

Div. II, Raton

District Court Clerks

Janett Martinez, Court Administrator 758-3173

105 Albright, Ste. H, Taos 87571

AnnaBelle Pena, Chief Deputy Clerk 445-5585

Colfax County Courthouse, P.O. Box 160,

Raton 87740

Christina Ansley 374-9577

Union County Courthouse, P.O. Box 310,

Clayton 88415

NINTH JUDICIAL DISTRICT

Curry & Roosevelt

Stephen Quinn (R) 762-9529 2003-2008

Div. I, Clovis

Robert C. Brack (R) 762-4185 2003-2008

Div. II, Clovis

Ted L. Hartley (D) **2003-2008

Div. III, Clovis, Portales

Clovis 769-0963

Portales 356-4464

District Court Clerks

Claudia L. Wallace, Court Administrator 762-9148

Curry County Courthouse,

Clovis 88101

Margie Jones 356-4463

Roosevelt County Courthouse,

Portales 88130

TENTH JUDICIAL DISTRICT

Quay, De Baca & Harding

Ricky D. Purcell (D) 461-4422 2003-2008

Div. I, Tatum

District Court Clerks

Diane Ulibarri, Court Administrator 461-2764

P.O. Box 1067, Tatum 88401

Janean Grissom 355-2896

P.O. Box 910, Fort Sumner 88119

Lina I. Weisdorfer 673-2252

Harding County Courthouse,

Mosquero 87733

ELEVENTH JUDICIAL DISTRICT

McKinley & San Juan

William C. Birdsall (D) 334-4893 2003-2008

Div. I, Aztec

Joseph L. Rich (D) 722-4342 2003-2008

Div. II, Gallup

Douglas A. Echols (D) 564-3017 **2003-2004

Div. III, Farmington

John A. Dean, Jr. (D) 326-2256 **2003-2004

Div. IV, Farmington

Grant Foutz (D) 722-4341 2003-2008

Div. V, Gallup

Thomas J. Hynes (D) 334-4895 **2003-2004

Div. VI, Aztec

District Court Clerks

Weldon J. Neff, Court Administrator 334-6151

103 S. Oliver, Aztec 87410

Fran Palochak 863-6816

McKinley County Courthouse

201 W. Hill St., Rm. 21, Gallup 87301

TWELFTH JUDICIAL DISTRICT

Lincoln & Otero

Jerry H. Ritter, Jr. (R) 437-3030 2003-2008

Div. I, Alamogordo

James Waylon Counts (R) 434-0573 2003-2008

Div. II, Alamogordo

Karen Parsons (R) 648-2902 2003-2008

Div. III, Carrizozo

Frank K. Wilson (R) 439-1333 2003-2008

Div. IV, Alamogordo

District Court Clerks

Jan Perry, Court Administrator 437-7310 ext. 31

Otero County Courthouse, Rm. 209,

Alamogordo 88310-6940

Karen Duprey 437-7310 ext. 22

Otero County Courthouse, Rm. 209,

Alamogordo 88310-6940

Darla Goar 648-2432

P.O. Box 725, Carrizozo 88301

THIRTEENTH JUDICIAL DISTRICT

Cibola, Sandoval & Valencia

John W. Pope (D) 865-9654 2003-2008

Div. I, Los Lunas

Kenneth G. Brown (D) 867-2861 2003-2008

Div. II, Bernalillo

William "Bill" Sanchez (D) 865-4010 2003-2008

Div. III, Los Lunas

Camille E. Olguin (D) 287-2104 2003-2008

Div. IV, Grants

Louis P. McDonald (D) 867-0563 2003-2008

Div. V, Bernalillo

District Court Clerks

Gregory T. Ireland, Court Administrator 865-4639

P.O. Box 1089, Los Lunas 87031

Jamie Guy Goldberg 865-4639

P.O. Box 1089, Los Lunas 87031

Theresa Valencia 867-2376

100 Avenida de Justicia, Bernalillo 87004

Elisa Bro 287-8831

P.O. Box 758, Grants 87020

Administrative Office of the Courts

Gina M. Maestas, Director

237 Don Gaspar, Rm. 25

Santa Fé, New Mexico 87501

827-4800

* Elected to fill unexpired term.

* *Appointed to serve until next general election.

DISTRICT ATTORNEYS

Telephone	Term
------------------	-------------

FIRST JUDICIAL DISTRICT

Santa Fé, Rio Arriba & Los Alamos

Henry R. Valdez (D)	2001-2004
---------------------	-----------

P.O. Box 2041, Santa Fé 87504-2041

Santa Fé County, Main	827-5000
-----------------------	----------

Rio Arriba County 753-7131

SECOND JUDICIAL DISTRICT

Bernalillo

Kari E. Brandenburg (D) 841-7100 2001-2004

520 Lomas NW, Albuquerque 87102

THIRD JUDICIAL DISTRICT

Doña Ana

Susana Martinez (R) 524-6370 2001-2004

201 West Picacho, Ste. B, Las Cruces 88005

FOURTH JUDICIAL DISTRICT

Guadalupe, Mora & San Miguel

Matthew J. Sandoval (D) 2001-2004

P.O. Box 2025, Las Vegas 87701

San Miguel County, Main 425-6746

Mora County 387-2278

Guadalupe County 472-3230

FIFTH JUDICIAL DISTRICT

Chaves, Eddy & Lea

Thomas A. Rutledge (R) 2001-2004

102 S. Canal, Ste. 200, Carlsbad 88220

Eddy County, Main 885-8822

Chaves County 622-4121

Lea County (Lovington) 396-7616

Lea County (Hobbs) 397-2471

SIXTH JUDICIAL DISTRICT

Grant, Hidalgo & Luna

Jim Foy (D) 2001-2004

P.O. Box 1025, Silver City 88062

Grant County, Main 388-1941

Hidalgo County 542-3260

Luna County 546-6526

SEVENTH JUDICIAL DISTRICT

Catron, Sierra, Socorro & Torrance

Clint Wellborn (R) 2001-2004

P.O. Box 1099, Socorro 87801

Socorro County, Main 835-0052

Sierra County 894-9033

Torrance County 384-2800

EIGHTH JUDICIAL DISTRICT

Colfax, Taos & Union

Donald A. Gallegos (D) 2001-2004

920 Salazar Rd., Ste. A, Taos 87571

Taos County, Main 758-8683

Colfax County 445-5516

Union County 374-2569

NINTH JUDICIAL DISTRICT

Curry & Roosevelt

Brett J. Carter (R) 2002-2004

700 N. Main, Ste. 16, Clovis 88101

Curry County, Main 769-2246

Roosevelt County 356-4434

TENTH JUDICIAL DISTRICT

Quay, De Baca & Harding

Ronald W. Reeves (D) 2001-2004

P.O. Box 1141, Tucumcari 88401-1141

Quay County 461-2075

ELEVENTH JUDICIAL DISTRICT

McKinley & San Juan

Gregory M. Tucker (R) 2001-2004

Division 1

710 E. 20th St., Farmington 87401

San Juan County 599-9810

Karl Gillson (D) 2001-2004

Division 2

409 S. Second St., Gallup 87301

McKinley County 722-2281

TWELFTH JUDICIAL DISTRICT

Lincoln & Otero

Scot D. Key (R) 2001-2004

1000 New York Ave., Rm. 301

Alamogordo 88310-6998

Otero County, Main 437-3640

Lincoln County 648-2383

THIRTEENTH JUDICIAL DISTRICT

Cibola, Sandoval & Valencia

Lemuel L. Martinez (D) 2001-2004

P.O. Box 637, Grants 87020

Cibola County, Main 285-4627

Valencia County 865-9643

Sandoval County (Bernalillo) 867-2386

Sandoval County (Rio Rancho) 896-3952

Administrative Office of the District Attorneys

Joyce Bustos, Director

1313 St. Francis Dr.

Santa Fé, New Mexico 87505

827-3789

STATE BOARD OF EDUCATION*

Telephone Term

DISTRICT 1

Bernalillo & Sandoval

Flora M. Sanchez (D) Albuquerque 873-3913 2001-2004

DISTRICT 2

Bernalillo

Millie Pogna (R)

Albuquerque 299-6701 2003-2006

DISTRICT 3

Bernalillo

Christine V. Trujillo (D)

Albuquerque 265-4208 2003-2006

DISTRICT 4

Sandoval & Santa Fé

Eleanor B. Ortiz (D)

Santa Fé 982-4742 2001-2004

DISTRICT 5

McKinley, Sandoval & San Juan

Johnny R. Thompson (D)

Churchrock (928) 871-6367 2003-2006

DISTRICT 6

Bernalillo, Catron, Cibola, Grant, Hidalgo,

Luna, Socorro, & Valencia

Catherine M. Smith (D)

Mimbres 536-9550 2003-2006

DISTRICT 7

Doña Ana, & Otero

John A. Darden (R)

Las Cruces 526-6655 2003-2006

DISTRICT 8

Chaves, De Baca, Guadalupe,

Lincoln, Otero, Santa Fé, Sierra & Torrance

John R. Lankford (R) 2001-2004

Roswell 623-9258

DISTRICT 9

Chaves, Curry, Eddy, Lea, Quay & Roosevelt

Scott B. Barthel (R) 2001-2004

Hobbs 392-2961

DISTRICT 10

Colfax, Guadalupe, Harding, Los Alamos

Mora, Rio Arriba, San Juan, San Miguel,

Sandoval, Santa Fé, Taos & Union

Alfred J. Herrera (D) 2001-2004

Espanola 753-7833

* The State Board of Education is comprised of 15 members. (Numbered districts represent elected board members. Lettered districts represent governor-appointed board members. Appointees represent two districts each.) Members from the numbered districts are included in this Roster because they are elected officials; those from the lettered districts are not included, because they are not elected officials.

State Board of Education

Mary Jo Bradley, Administrative Assistant

Education Bldg., 300 Don Gaspar

Santa Fé, NM 87501-2786

827-6571

County Officials

of

New Mexico

BERNALILLO COUNTY

Albuquerque/Bernalillo County Government Center

One Civic Plaza, NW

Albuquerque, New Mexico 87102

www.bernco.gov

	COUNTY COMMISSIONERS	Telephone	Term
1	Alan B. Armijo (D)	768-4000	2003-2006
2	Steve D. Gallegos (D)		2001-2004
3	Thomas T. Rutherford (D)		2001-2004
4	E. Tim Cummins (R)		2001-2004
5	Michael Brasher (R)		2003-2006

COUNTY MANAGER

Juan Vigil

One Civic Plaza NW, 10th FL.

Albuquerque 87102 768-4000

manager@bernco.gov

COUNTY CLERK

Mary Herrera (D) 2001-2004

One Civic Plaza NW, 6th FL.,

Albuquerque 87102 768-4090

clerk@bernco.gov

COUNTY TREASURER

Alex Abeyta, Jr. (D) 2001-2004

One Civic Plaza NW, Basement,
Albuquerque 87102 768-4031
treas@bernco.gov

COUNTY ASSESSOR

Mark J. Carrillo (D) 2003-2006
501 Tijeras, NW Albuquerque 87102 222-3700
assessor@bernco.gov

COUNTY SHERIFF

Darren P. White (R) 2003-2006
401 Roma NW, Albuquerque 87102 768-4100
sheriff@bernco.gov

PROBATE JUDGE

Merri Rudd (D) 2003-2006
One Civic Plaza NW, 6th FL.
Albuquerque 87102 768-4247
probate@bernco.gov

Bernalillo County Metropolitan Court

401 Roma, NW

Albuquerque, New Mexico 87102

METROPOLITAN COURT JUDGES

Division	Telephone	Term
1	Denise Barela Sheperd (R) 841-8263	2003-2006
2	Kevin L. Fitzwater (R) 841-8281	2003-2006
3	Cristina Jaramillo (R) 841-8225	**2003-2004
4	Charles R. Barnhart (R) 841-8285	2003-2006
5	Frank A. Sedillo (D) 841-8287	2003-2006
6	J. Wayne Griego (D) 841-8289	**2003-2004

7	Sandra J. Clinton (R)	841-8276	2003-2006
8	Judith K. Nakamura (R)	841-8293	2003-2006
9	Victoria J. Grant (D)	841-8261	2003-2006
10	Frank William Gentry (R)	841-8297	2003-2006
11	Loretta Lopez (D)	841-8283	**2003-2006
12	Marie A. Baca (D)	841-8220	2003-2006
13	J. Michael Kavanaugh (D)	841-8193	2003-2006
14	Theresa A. Gomez (D)	841-8196	2003-2006
15	Anna G. Martinez (D)	841-8291	2003-2006
16	Sharon D. Walton (R)	841-8247	2003-2006

Court Administrator

Tobias C. Martinez 841-8105

**Appointed to serve until next general election.

CATRON COUNTY

Catron County Courthouse

P.O. Box 197

Reserve, New Mexico 87830

<http://totalwebgov.org/CatronCountyNM>

	COUNTY COMMISSIONERS	Telephone	Term
1	S. Rufus Choate (R)	533-6423	2003-2006
2	Francis E. (Edward) Wehrheim (R)		2003-2006
3	Auggie D. Shellhorn (D)		2001-2004

COMMISSION ASSISTANT

Joy Riley

Catron County Courthouse

P.O. Box 507, Reserve 87830 533-6423

joyriley@gilanet.com

COUNTY CLERK

Sharon Armijo (D) 2001-2004

Catron County Courthouse

P.O. Box 197, Reserve 87830 533-6400

cclerk@gilanet.com

COUNTY TREASURER

Janet S. Porter (D) 2001-2004

P.O. Box 407, Reserve 87830 533-6384

ctreasur@gilanet.com

COUNTY ASSESSOR

Irene J. Rael (R) 2003-2006

P.O. Box 416, Reserve 87830 533-6577

cassessr@gilanet.com

COUNTY SHERIFF

John Cliff Snyder (R) 2003-2006

P.O. Box 467, Reserve 87830 533-6222

ccs01@gilanet.com

PROBATE JUDGE

Theresa Estrada (R) 2003-2006

Catron County Courthouse 533-6400 or

P.O. Box 197, Reserve 87830 533-6247

MAGISTRATE

Clayton T. Atwood (D) 2003-2006

P.O. Box 447, Reserve 87830 533-6474

P.O. Box 283, Quemado 87829 773-4604

resmcta@nmcourts.com

CHAVES COUNTY

Chaves County Courthouse

P.O. Box 1817

Roswell, New Mexico 88201

	COUNTY COMMISSIONERS	Telephone	Term
1	Michael A. Trujillo (D)	624-6600	2003-2006
2	Harold E. Hobson (R)		2001-2004
3	Alice Eppers (R)	*2003-2004	
4	Jerry E. Wood (R)	2001-2004	
5	Susan L. Gutierrez (R)	2003-2006	

COUNTY MANAGER

Stan Riggs

P.O. Box 1817, Roswell 88202 624-6600

COUNTY CLERK

Dave Kunko (R) 2001-2004

P.O. Box 580, Roswell 88202 624-6614

Fax 624-6523

COUNTY TREASURER

Anita L. Maner (R) 2001-2004

P.O. Box 1772, Roswell 88202 624-6618

COUNTY ASSESSOR

Mark D. Willard (R) 2003-2006

#1 St. Mary's Place, Suite 130

Roswell 88203 624-6603

COUNTY SHERIFF

Pat Jennings (R) 2003-2006

P.O. Box 1396, Roswell 88202 624-6500

PROBATE JUDGE

Clarke C. Coll (R) 2003-2006
P.O. Box 580, Roswell 88202 622-5440

MAGISTRATES

Division

1 Eugene M. De Los Santos (R) 2003-2006
200 E. 4th, Roswell 88201 624-6088

2 Robert B. Corn (R) 2003-2006
200 E. 4th, Roswell 88201 624-6088

*Elected to fill unexpired term.

CIBOLA COUNTY

515 W. High St.

Grants, New Mexico 87020

COUNTY COMMISSIONERS	Telephone	Term
1 Freddie John Scott (D)	287-9431	2003-2006
2 Isaac F. Padilla (D)		2001-2004
3 W. Frank Emerson (D)		2003-2006
4 Arturo Candelaria (D)		2001-2004
5 Bennie Cohoe (D)		2001-2004

ACTING COUNTY MANAGER

David Ulibarri

515 W. High St., Grants 87020 287-9431

COUNTY CLERK

Eileen M. Martinez (D) 2001-2004
515 W. High St., Grants 87020 285-2535

COUNTY TREASURER

Norma Vigil Dominguez (D) 2001-2004
515 W. High St., Grants 87020 285-2520

COUNTY ASSESSOR

Theresa A. Garcia (D) 2003-2006
515 W. High St., Grants 87020 285-2526

COUNTY SHERIFF

Manuel N. Lujan (D) 2003-2006
515 W. High St., Grants 87020 285-2549

PROBATE JUDGE

Susie T. Gallegos (D) 2003-2006
515 W. High St., Grants 87020 285-2552

MAGISTRATES

Division

1	Jackie A. Fisher (D)	2003-2006
	515 W. High St., Grants 87020	285-4605
2	Eliseo Lee Alcon (D)	2003-2006
	515 W. High St., Grants 87020	285-4605

COLFAX COUNTY

Colfax County Courthouse

Raton, New Mexico 87740

	COUNTY COMMISSIONERS	Telephone	Term
1	Charles B. Gonzales (D)	445-2906	2003-2006
2	James B. Marchetti (D)		2003-2006
3	Roy E. Ackerman (R)		2001-2004

COUNTY MANAGER

Kathy M. Trujillo
P.O. Box 1498, Raton 87740 445-2906

COUNTY CLERK

Barbara Castillo (D) 2001-2004

P.O. Box 159, Raton 87740 445-5551

COUNTY TREASURER

Roselee Baca (D) 2001-2004

P.O. Box 98, Raton 87740 445-3171

COUNTY ASSESSOR

Adeline Y. Shell (D) 2003-2006

P.O. Box 427, Raton 87740 445-2314

COUNTY SHERIFF

Sidney L. Taylor (D) 2003-2006

P.O. Box 39, Raton 87740 445-5561

PROBATE JUDGE

Marietta G. Shell (D) 2003-2006

P.O. Box 159, Raton 87740 445-9565

MAGISTRATES

Division

1 Warren G. Walton (R) 2003-2006

P.O. Box 68, Raton 87740 455-2220

2 Fred C. Caldwell (R) 2003-2006

P.O. Box 778, Springer 87747 483-2417

CURRY COUNTY

Curry County Courthouse

700 N. Main Street

Clovis, New Mexico 88101

www.currycounty.org

	COUNTY COMMISSIONERS	Telephone	Term
1	Edwin H. Perales (D)	763-6016	2003-2006
2	Pete Hulder (R)	2001-2004	

3 Kathryn A. Tate (D) 2003-2006
4 J. Albin Smith (R) **2002-2004
5 Tim L. Ashley (R) 2001-2004

cccommission@plateautel.net

COUNTY MANAGER

Geneva Cooper

700 N. Main St., Ste. 10, Clovis 88101 763-6016

geneva@plateautel.net

COUNTY CLERK

Mario Trujillo (D) 2001-2004

P.O. Box 1168, Clovis 88102-1168 763-5591

mltrujillo@plateautel.net

COUNTY TREASURER

Linda Hall (D) 2001-2004

P.O. Box 897, Clovis 88102-0897 763-3931

lhall@plateautel.net

COUNTY ASSESSOR

Randy J. Williams (D) 2003-2006

700 N. Main St., Ste. 6, Clovis 88101

curryassessor@plateautel.net 763-5731

COUNTY SHERIFF

Roger J. Hatcher (R) 2003-2006

P.O. Box 1043, Clovis 88102-1043 769-2335

sheriff@plateautel.net

PROBATE JUDGE

Ribble B. Holloman (D) 2003-2006

P.O. Box 1168, Clovis 88102-1168 763-5591

MAGISTRATES

Division

1 Doug Miller (D) 2003-2006

221 Pile St., Clovis 88101 762-3766

2 Richard L. Hollis, Jr. (R) 2003-2006

221 Pile St., Clovis 88101 762-3766

www.nmcourts.com

**Appointed to fill unexpired term.

DE BACA COUNTY

De Baca County Courthouse

Fort Sumner, New Mexico 88119

COUNTY COMMISSIONERS Telephone Term

1 Joe Steele (D) 355-2601 2003-2006

2 Tommy Roybal (D) 2003-2006

3 Powhatan Carter III (D) 2001-2004

COUNTY CLERK

Nancy Sparks (D) 2001-2004

P.O. Box 347, Fort Sumner 88119 355-2601

dbcclerkns@plateautel.net

COUNTY TREASURER

Pat Propps (D) 2001-2004

P.O. Drawer 389, Fort Sumner 88119 355-7395

dbctreasurer@plateautel.net

COUNTY ASSESSOR

Barbara Landrum (D) 2003-2006

P.O. Box 906, Fort Sumner 88119 355-7448

dbcassessor@plateautel.net

COUNTY SHERIFF

Gary Wayne Graves (D) 2003-2006
P.O. Box 927, Fort Sumner 88119 355-2405

PROBATE JUDGE

Linda Gail Sena (D) 2003-2006
P.O. Box 347, Fort Sumner 88119 355-2601
linda_sena@hotmail.com

MAGISTRATE

Buddy J. Hall (R) 2003-2006
P.O. Box 24, Fort Sumner 88119 355-7371

DOÑA ANA COUNTY

Doña Ana County Courthouse
251 W. Amador Avenue
Las Cruces, New Mexico 88005
www.co.dona-ana.nm.us

	COUNTY COMMISSIONERS	Telephone	Term
1	Oscar Vasquez-Butler (D)	647-7201	2003-2006
2	Arturo C. Terrazas (D)		2001-2004
3	Paul B. Curry (R)	2003-2006	
4	D. Kent Evans (R)		2001-2004
5	Gilbert T. Apodaca (D)		2001-2004

COUNTY MANAGER

Doña Ana County Manager's Complex
180 W. Amador Ave.,
Las Cruces 88005 647-7201
lesliek@co.dona-ana.nm.us

COUNTY CLERK

Ruben Ceballos (D) 2001-2004

251 W. Amador Ave., Rm. 103,

Las Cruces 88005 647-7420

rceballos@co.dona-ana.nm.us

COUNTY TREASURER

David Gutierrez (D) 2001-2004

251 W. Amador Ave., Rm. 101,

Las Cruces 88005 647-7433

davidg@co.dona-ana.nm.us

COUNTY ASSESSOR

Gary C. Perez (D) 2003-2006

251 W. Amador Ave., Rm. 106,

Las Cruces 88005 647-7404

COUNTY SHERIFF

Juan Hernandez (D) 2003-2006

750 A. Motel Blvd., Las Cruces 88007 647-7801

PROBATE JUDGE

Olivia N. Garcia (D) 2003-2006

251 W. Amador Ave., Rm. 103,

Las Cruces 88005 647-7419

MAGISTRATES

Division

1 Oscar C. Fietze (D) 2003-2006

151 N. Church., Las Cruces 88001 524-2814

2 Susana Chaparro (D) 2003-2006

151 N. Church., Las Cruces 88001

3 Reuben Galvan (D) 2003-2006

151 N. Church., Las Cruces 88001

4 Ann F. Segal (D) 2001-2004

151 N. Church., Las Cruces 88001

5 Carlos E. Garza (D) *2001-2006

151 N. Church., Las Cruces 88001

EDDY COUNTY

Eddy County Courthouse

Carlsbad, New Mexico 88221

www.caverns.net/ecourt

	COUNTY COMMISSIONERS	Telephone	Term
1	Julius E. Doubrava (D)	887-9511	2003-2006
2	Glenn Collier (R)	2001-2004	
3	Laurie Kincaid (D)	2001-2004	
4	Lucky Briggs (R)	2003-2006	
5	Ray L. Camp (D)	2001-2004	

COUNTY MANAGER

Stephen Massey

101 W. Greene, Ste. 110,

Carlsbad 88220 887-9511

smassey@co.eddy.nm.us

COUNTY CLERK

Jean Blenden (D) 2003-2006

101 W. Greene, Ste. 312,

Carlsbad 88220 885-3383

eddyclerk@co.eddy.nm.us

COUNTY TREASURER

Emma Salgado (D) 2001-2004

101 W. Greene, Ste. 117,
Carlsbad 88220 885-3913
eddytreas@co.eddy.nm.us

COUNTY ASSESSOR

Anndrea K. Wilcox (D) 2003-2006
101 W. Greene, Ste. 319,
Carlsbad 88220 885-3813
ecao@co.eddy.nm.us

COUNTY SHERIFF

D. Kent Waller (D) 2001-2004
P.O. Box 1240,
Carlsbad 88221-1240 887-7553
kentwaller@co.eddy.nm.us

PROBATE JUDGE

Charlene Wright (D) 2003-2006
101 W. Greene, Carlsbad 88220 885-4008

MAGISTRATES

Division

1 Henry T. Castaneda, Jr. (D) 2003-2006
1949 S. Canal St., 885-3218
Carlsbad 88220

2 Walter R. Parr (D) 2003-2006
1949 S. Canal St., 885-3218
Carlsbad 88220

3 Larry E. Wood (D) 2003-2006
611 Mahone Dr., Artesia 88210 746-2481
Esther Rojas, Chief Clerk

1949 S. Canal, Carlsbad 88220 885-3218

carmetr@nmcourts.com

Wavis Jackson, Chief Clerk 746-2481

109 N. 15th, Artesia 88210

artmwij@nmcourts.com

GRANT COUNTY

Grant County Courthouse

Silver City, New Mexico 88061

COUNTY COMMISSIONERS	Telephone	Term
1 Joseph F. Arellano (D)	574-0001	2003-2006
2 Charles L. Kelly (D)		2003-2006
3 Henry Torres (D)	2001-2004	

COUNTY MANAGER

Harry Burgess 574-0001

P.O. Box 898, Silver City 88062

COUNTY CLERK

Jeff A. Carbajal (D) **2002-2004

P.O. Box 898, Silver City 88062 574-0042

COUNTY TREASURER

Rusilia Vega Benavidez (D) 2001-2004

P.O. Box 89, Silver City 88062 574-0055

COUNTY ASSESSOR

Raul S. Turrieta (D) 2003-2006

P.O. Box 972, Silver City 88062 574-0030

COUNTY SHERIFF

Raul "Bully" Holguin (D) 2003-2006

P.O. Box 3020, Silver City 88062 574-0100

PROBATE JUDGE

Jo Ann F. Salcido (D) 2003-2006

P.O. Box 898, Silver City 88062 574-0071

MAGISTRATES

Division

1 Ron Hall (D) 2003-2006

P.O. Box 937, Silver City 88062 538-3811

2 Y.B. Morales (D) 2003-2006

P.O. Box 125, Bayard 88023 537-3042

**Appointed to fill unexpired term.

GUADALUPE COUNTY

Guadalupe County Courthouse

420 Parker Ave.

Santa Rosa, New Mexico 88435

COUNTY COMMISSIONERS Telephone Term

1 James G. "Bozo" Cordova (D) 472-3306 2003-2006

2 Richard Leo Chavez (D) 2003-2006

3 Jimmy G. Barela (D) 2001-2004

COUNTY MANAGER

Roman Garcia

420 Parker Ave., Santa Rosa 88435 472-3306

rgarcia@plateautel.net

COUNTY CLERK

Mary Silva (D) 2001-2004

420 Parker Ave., Santa Rosa 88435 472-3791

guadctyclerk@plateautel.net

COUNTY TREASURER

Viola C. Pacheco (D) 2001-2004
420 Parker Ave., Santa Rosa 88435 472-3133
mmireles@plateautel.net

COUNTY ASSESSOR

Ian John Serrano (D) 2003-2006
420 Parker Ave., Santa Rosa 88435 472-3738
iserrano@plateautel.net

COUNTY SHERIFF

Robert G. Chavez (D) 2003-2006
117 S. Fifth St., Santa Rosa 88435 472-3711

PROBATE JUDGE

Jose "Billy" Casaus (D) 2003-2006
420 Parker Ave., Santa Rosa 88435 472-3277

MAGISTRATE

James Eloy Moncayo (D) 2003-2006
141 S. Fifth St., Santa Rosa 88435 472-3237

HARDING COUNTY

Harding County Courthouse

P.O. Box 1002

Mosquero, New Mexico 87733

	COUNTY COMMISSIONERS	Telephone	Term
1	Robert L. Casados (D)	673-2927	2003-2006
2	Michael E. Lewis (D)		2003-2006
3	Navor R. Gutierrez (D)		2001-2004

COMMISSION SECRETARY

Barbara Shaw

P.O. Box 1002, Mosquero 87733 673-2927

COUNTY CLERK

Elizabeth Martinez (D) 2001-2004

P.O. Box 1002, Mosquero 87733 673-2301

COUNTY TREASURER

Lucille Pacheco (D) 2001-2004

P.O. Box 1002, Mosquero 87733 673-2928

COUNTY ASSESSOR

Tonja Hazen Martinez (R) 2003-2006

P.O. Box 1002, Mosquero 87733 673-2926

COUNTY SHERIFF

Freddie L. Gift (R) 2003-2006

P.O. Box 1002, Mosquero 87733 673-2231

PROBATE JUDGE

Carrie Archuleta (R) 2003-2006

P.O. Box 35, Mosquero 87733 673-2379

MAGISTRATE JUDGE

Karen P. Mitchell (R) 2003-2006

P.O. Box 9, Roy 87743 485-2549

HIDALGO COUNTY

Hidalgo County Courthouse

300 S. Shakespeare St.

Lordsburg, New Mexico 88045

	COUNTY COMMISSIONERS	Telephone	Term
1	Anthony J. Mora (D)	542-9428	2003-2006
2	Harold Kuentler (R)		2003-2006
3	Louise Peterson (D)		2001-2004

COUNTY MANAGER

Tom Anderson

300 S. Shakespeare St.,
Lordsburg 88045 542-9428

COUNTY CLERK

Belinda C. Chavez (D) 2001-2004

300 S. Shakespeare St.,
Lordsburg 88045 542-9213

COUNTY TREASURER

Patsy M. Camacho (D) 2001-2004

300 S. Shakespeare St.,
Lordsburg 88045 542-9313

COUNTY ASSESSOR

Tonya "Toni" Lowery (R) 2003-2006

300 S. Shakespeare St.,
Lordsburg 88045 542-3433

COUNTY SHERIFF

Robert E. Hall (R) 2003-2006

213 E. 2nd St.,
Lordsburg 88045 542-3833

PROBATE JUDGE

Janet Farley Richardson (D) 2003-2006

300 S. Shakespeare St.,
Lordsburg 88045 542-9512

MAGISTRATE

James D. Hall (R) 2003-2006

420 Wabash Ave.,

Lordsburg 88045 542-3582

LEA COUNTY

Lea County Courthouse

Lovington, New Mexico 88260

www.leacounty.net

COUNTY COMMISSIONERS Telephone Terms

	lethridge@leacounty.net		
1	Ross Warren Black (R)	396-8601	2001-2004
2	Harry Teague (D)		2003-2006
3	Gary M. Schubert (R)		2003-2006
4	Zeak L. Williams, Jr. (D)		2001-2004
5	Darroid E. Stephenson (R)		2001-2004

COUNTY MANAGER

Dennis Holmberg

Lea County Courthouse, P.O. Box 4-C,

Lovington 88260 396-8601

dholmberg@leacounty.net

COUNTY CLERK

Melinda Hughes (R) 2001-2004

P.O. Box 1507, Lovington 88260 396-8622

mhughes@leacounty.net

COUNTY TREASURER

Pam Tipton Zimmerman (R) 2001-2004

Lea County Courthouse, P.O. Box 3-C,

Lovington 88260 396-8640

pzimmerman@leacounty.net

COUNTY ASSESSOR

Shirley A. Tyler (R) 2003-2006

Lea County Courthouse, P.O. Box 2-C,

Lovington 88260 396-8626

styler@leacounty.net

COUNTY SHERIFF

Keith Rice (D) 2003-2006

215 E. Central, Lovington 88260 396-1163

krice@leacounty.net

PROBATE JUDGE

Darrell L. Powell (R) 2003-2006

P.O. Box 1507, Lovington 88260 396-8648

MAGISTRATES

Division

1 Tony G. Knott (R) 2003-2006

100 W. Central, Ste. D,

Lovington 88260 396-6677

2 Donna M. Lemmons (R) 2003-2006

2116 N. Alto, Hobbs 88240 397-3621

3 Russell D. Martin (R) 2003-2006

2200 W. Ave. O, P.O. Box 240,

Eunice 88231 394-3368

400 S. Highway 18, P.O. Box 507,

Jal 88252 395-2740

4 Bethe S. Cunningham (R) 2003-2006

P.O. Box 918, Tatum 88267 398-5300

5 Jack D. Bailey (D) 2003-2006

2116 N. Alto, Hobbs 88240 397-3621

LINCOLN COUNTY

Lincoln County Courthouse

Carrizozo, New Mexico 88301

www.lincolncountynm.net

COUNTY COMMISSIONERS	Telephone	Terms
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1 Rex A. Wilson (R)	648-2385	2001-2004
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2 Mauriece A. St. John (R)		2003-2006
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3 Leo Martinez (R)	2001-2004	
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4 Earl B. Hobbs (R)	2003-2006	
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5 Rick L. Simpson (R)	2003-2006	
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COUNTY MANAGER

Tom Stewart

P.O. Box 711, Carrizozo 88301 648-2385

linclnco@tularosa.net

COUNTY CLERK

Tammie J. Maddox (R)	2003-2006	
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P.O. Box 338, Carrizozo 88301 648-2394

tmaddox@tularosa.net

COUNTY TREASURER

Beverly Payne Calaway (R)	2003-2006	
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P.O. Box 709, Carrizozo 88301 648-2397

calaway9@netscape.net

COUNTY ASSESSOR

Rick Silva (R)	2001-2004	
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P.O. Box 38, Carrizozo 88301 648-2306

richard@lincolncountynm.net

COUNTY SHERIFF

Tom Sullivan (R) 2001-2004
P.O. Box 278, Carrizozo 88301 648-2342

PROBATE JUDGE

Stirling T. Spencer (R) 2001-2004
P.O. Box 338, Carrizozo 88301 648-2814

MAGISTRATES

Division

1 Martha M. Proctor (R) 2003-2006
P.O. Box 488, Carrizozo 88301 648-2389

2 William R. Butts (R) 2003-2006
301 W. Hwy. 70 #2,
Ruidoso 88345 378-7022

LOS ALAMOS COUNTY

2300 Trinity Drive, P.O. Box 30

Los Alamos, New Mexico 87544

www.lac-nm.us

COUNTY COUNCIL Telephone Terms

council@lac.losalamos.nm.us

1 Diane E. Albert (D)	662-8080	2001-2004
2 Michael G. Wheeler (D)	662-8080	2003-2006
3 Geoffrey M. Rodgers (R)	662-8080	2001-2004
4 Frances M. Berting (R)	662-8080	2001-2004
5 Jim L. West (R)	662-8080	2003-2006
6 Michael E. Wismer (R)	662-8080	2003-2006
7 Nona B. Bowman (R)	662-8080	2003-2006

COUNTY ADMINISTRATOR

Mary McInerney

2300 Trinity Dr., Los Alamos 87544 662-8080

mcinernym@lac.losalamos.nm.us

COUNTY CLERK

Nita K. Taylor (R) 2001-2004

2300 Trinity Dr., Los Alamos 87544 662-8010

clerk@lac.losalamos.nm.us

COUNTY ASSESSOR

Jane Y. Bates (R) 2003-2006

2300 Trinity Dr., Los Alamos 87544 662-8030

COUNTY SHERIFF

William J. Verzino (R) 2003-2006

2300 Trinity Dr., Los Alamos 87544 662-8028

PROBATE JUDGE

Bettie L. Kerr (R) 2003-2006

2300 Trinity Dr., Los Alamos 87544 662-8013

MAGISTRATE

Pat A. Casados (D) 2003-2006

1319 Trinity Drive, Los Alamos 87544 662-2727

MUNICIPAL JUDGE

Alan S. Kirk (R) 2003-2006

2300 Trinity Dr., Los Alamos 87544 662-8025

kirka@lac.losalamos.nm.us

LUNA COUNTY

Luna County Courthouse

700 S. Silver St.

Deming, New Mexico 88030

www.lunacountynm.com

	COUNTY COMMISSIONERS	Telephone	Term
1	Alfonso Armijo (D)	546-0494	2003-2006
2	Fannie Tillman Smyer (D)		2003-2006
3	Marilyn Offutt (D)	2001-2004	

COUNTY MANAGER

Scott Vinson

P.O. Box 551, Deming 88031 546-0494

scott@lunacountynm.net

COUNTY CLERK

Natalie Pacheco (D) 2001-2004

P.O. Box 1838, Deming 88031 546-0491

natalie@lunacountynm.net

COUNTY TREASURER

Gloria A. Rodriguez (D) 2001-2004

P.O. Box 1758, Deming 88031 546-0401

gloria@lunacountynm.net

COUNTY ASSESSOR

Patricia A. "Patsy" Leyba (D) 2003-2006

700 S. Silver St., Deming 88030 546-0404

pleyba@lunacountynm.net

COUNTY SHERIFF

Gary N. Ciccotelli (D) 2003-2006

116 E. Poplar, Deming 88030 546-2655

www.lunacountysheriff.com

PROBATE JUDGE

Delia I. Perez (R) 2003-2006

P.O. Box 1838, Deming 88031 546-0491

MAGISTRATE

Frederick G. Gifford (R) 2003-2006
912 S. Silver St., Deming 88031 546-9321

McKINLEY COUNTY

McKinley County Courthouse
Gallup, New Mexico 87301

	COUNTY COMMISSIONERS	Telephone	Term
1	Billy W. Moore (D)	722-3868	2003-2006
2	Earnest C. Becenti, Jr. (D)		2003-2006
3	Harry H. Mendoza (D)		2001-2004

COUNTY MANAGER

Vacant
P.O. Box 70, Gallup 87305722-3868

COUNTY CLERK

Carol K. Sloan (D) 2001-2004
P.O. Box 1268, Gallup 87305 863-6866
boedirector@cnetco.com

COUNTY TREASURER

Charles Long (D) 2001-2004
McKinley County Courthouse,
Gallup 87301 722-4459

COUNTY ASSESSOR

Sarah R. Ortiz (D) 2003-2006
McKinley County Courthouse,
Gallup 87301 863-3032

COUNTY SHERIFF

Félix T. Begay (D) 2003-2006

P.O. Box 1209, Gallup 87305 863-3132

PROBATE JUDGE

Monica R. Martinez (D) 2003-2006

McKinley County Courthouse,

Gallup 87301 863-6866

MAGISTRATES

Division

1 Rhoda A. Hunt (D) 2003-2006

285 Boardman Dr., Gallup 87301 722-6636

2 George J. Galanis (D) 2003-2006

285 Boardman Dr., Gallup 87301 722-6636

3 John J. Carey (D) 2003-2006

P.O. Box 37, Thoreau 87323 722-6636

MORA COUNTY

Mora County Courthouse

Mora, New Mexico 87732

COUNTY COMMISSIONERS Telephone Term

1 Peter A. Martinez (D) 387-5279 2003-2006

2 Rosalie Regensberg (D) 2003-2006

3 Johnny R. Espinoza (D) 2001-2004

COUNTY MANAGER

Phillip Cantu

P.O. Box 580, Mora 87732 387-5279

COUNTY CLERK

Charlotte R. Duran (D) 2001-2004

P.O. Box 360, Mora 87732 387-2448

COUNTY TREASURER

Vicente Duran (D) 2001-2004

P.O. Box 210, Mora 87732 387-2756

COUNTY ASSESSOR

Angela K. Romero (D) 2003-2006

P.O. Box 609, Mora 87732-0609 387-5289

COUNTY SHERIFF

John L. Sanchez (R) 2003-2006

P.O. Box 659, Mora 87732-0659 387-2222

PROBATE JUDGE

Victoria Lujan (D) 2003-2006

P.O. Box 360, Mora 87732 387-5702

MAGISTRATE

Rudy C. Montoya (D) 2003-2006

P.O. Box 131, Mora 87732 387-2937

OTERO COUNTY

Otero County Courthouse

Alamogordo, New Mexico 88310

www.co.otero.nm.us

	COUNTY COMMISSIONERS	Telephone	Term
1	Doug L. Moore (R)	437-7427	2003-2006
2	Clarissa L. McGinn (R)		2003-2006
3	Michael Nivison (R)		2001-2004

COUNTY ADMINISTRATOR

Ruth Hooser

1000 New York Ave., Rm. 101

Alamogordo 88310-6935 437-7427

oteroadmin@co.otero.nm.us

COUNTY CLERK

Mary D. Quintana (R) 2001-2004

1000 New York Ave., Rm.108

Alamogordo 88310-6932 437-4942

oteroclerk@co.otero.nm.us

COUNTY TREASURER

Catherine B. Prather (R) 2001-2004

1000 New York Ave., Rm.110

Alamogordo 88310-6934 437-2030

oterotreas@co.otero.nm.us

COUNTY ASSESSOR

Dale A. Palkki (R) 2003-2006

1000 New York Ave., Rm.109

Alamogordo 88310-6994 437-5310

oteroassessor@co.otero.nm.us

COUNTY SHERIFF

John Blansett (R) 2003-2006

3208 N. White Sands

Alamogordo 88310 437-2210

oterosheriff@co.otero.nm.us

PROBATE JUDGE

Yvonne E. Boyle (R) 2003-2006

1000 New York Ave., Rm. 108

Alamogordo 88310-6932 437-4943

MAGISTRATES

Division

1 Ted McCutcheon (R) 2003-2006

1106 New York Ave.,

Alamogordo 88310 437-9000

2 Richard R. Stokely (R) 2003-2006

263 Robert H. Bradley Dr.,

Alamogordo 88310 437-9000

QUAY COUNTY

Quay County Courthouse

300 South Third St.

P.O. Box 1246

Tucumcari, New Mexico 88401

COUNTY COMMISSIONERS	Telephone	Term
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paulaquay@plateautel.net Fax 461-6208

1	Grace E. Madrid (D)	461-2112	2001-2004
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2	Jeffrey L. Lewalling (D)		2001-2004
---	--------------------------	--	-----------

3	Franklin D. McCasland (D)		2003-2006
---	---------------------------	--	-----------

COUNTY MANAGER

Paula D. Baker

P.O. Box 1246, Tucumcari 88401 461-2112

paulaquay@plateautel.net Fax 461-6208

COUNTY CLERK

Jeannette Maddaford (D) 2001-2004

P.O. Box 1225, Tucumcari 88401 461-0510

quaycountyclerk@hotmail.com Fax 461-0513

COUNTY TREASURER

Nadine K. Angel (D) 2001-2004

P.O. Box 1226, Tucumcari 88401 461-0470

nadinequay@plateautel.net Fax 461-8465

COUNTY ASSESSOR

Betty J. Bone (D) 2003-2006
P.O. Box 1227, Tucumcari 88401 461-1760
bettyquay@plateautel.net Fax 461-8465

COUNTY SHERIFF

Jack D. Huntley (D) 2003-2006
P.O. Box 943, Tucumcari 88401 461-2720
jackquay@plateautel.net Fax 461-2369

PROBATE JUDGE

Joyce L. Thrasher (D) 2003-2006
1943 Quay Rd. 65, San Jon 88434 576-2227
Fax 461-0513

MAGISTRATE

Edwin A. Bruhn (R) 2003-2006
P.O. Box 1301, Tucumcari 88401 461-1700
tucmeab@nmcourts.com Fax 461-4522

RIO ARRIBA COUNTY

Rio Arriba County Courthouse
Tierra Amarilla, New Mexico 87575
www.rioarribanm.com

	COUNTY COMMISSIONERS	Telephone	Term
1	Elias Coriz (D)	588-7254	2003-2006
2	Andrew Julian Chavez (D)		2003-2006
3	Moises A. Morales, Jr. (D)		2001-2004

COUNTY MANAGER

Lorenzo Valdez

P.O. Box 127, Tierra Amarilla 87575 588-7254

P.O. Box 1256, Española 87532

COUNTY CLERK

Fred Vigil (D) 2001-2004

P.O. Box 1256, Española 87532 753-1780

P.O. Box 158, Tierra Amarilla 87575 588-7724

COUNTY TREASURER

Robin F. Dominguez-Roybal (D) 2001-2004

P.O. Box 548, Tierra Amarilla 87575 588-7727

P.O. Box 1256, Española 87532 753-1663

COUNTY ASSESSOR

Arthur H. Rodarte (D) 2003-2006

P.O. Box 277, Tierra Amarilla 87575 588-7726

P.O. Box 1256, Española 87532 753-7019

COUNTY SHERIFF

Joe M. Mascarenas (D) 2003-2006

P.O. Box 98, Tierra Amarilla 87575 588-7271

P.O. Box 1256, Española 87532 753-3320

PROBATE JUDGE

Marlo R. Martinez (D) 2003-2006

P.O. Box 158, Tierra Amarilla 87575 588-7724

MAGISTRATES

Division

1 Tony F. Martinez (D) 2003-2006

P.O. Box 538, Chama 87520 756-2278

2 Alex M. Naranjo (D) 2003-2006

P.O. Box 1271, Española 87532 753-2532

ROOSEVELT COUNTY

Roosevelt County Courthouse

Portales, New Mexico 88130

	COUNTY COMMISSIONERS	Telephone	Term
1	Dennis Lopez (D)	359-1221	2001-2004
2	Charles H. "Chad" Davis (R)	276-8301	2001-2004
3	Thomas P. Clark (D)	273-4354	2003-2006
4	Gene Creighton (D)	274-6363	2003-2006
5	Paul E. Grider (D)	253-4561	2003-2006

COUNTY MANAGER

Charlene Hardin

Roosevelt County Courthouse,

Portales 88130 356-5307

COUNTY CLERK

Joyce Lee Frazee (D) 2001-2004

Roosevelt County Courthouse,

Portales 88130 356-8562

COUNTY TREASURER

Nancy C. Belcher (R) 2001-2004

Roosevelt County Courthouse,

Portales 88130 356-4081

COUNTY ASSESSOR

Royene Tivis (D) 2003-2006

Roosevelt County Courthouse,

Portales 88130 356-6971

COUNTY SHERIFF

Thomas M. Gossett (R) 2003-2006

c/o Law Enforcement Center

1700 N. Boston, Portales 88130 356-4409

PROBATE JUDGE

Nancy H. Gentry (D) 2001-2004

Roosevelt County Courthouse,

Portales 88130 359-1273

MAGISTRATE

Jane A. Martin (D) 2003-2006

42427 U.S. Hwy. 70, Portales 88130 356-8569

SAN JUAN COUNTY

100 S. Oliver Drive

Aztec, New Mexico 87410

www.co.san-juan.nm.us

COUNTY COMMISSIONERS	Telephone	Term
1 Wallace Charley (D)	334-9481	2003-2006
2 Ervin Chavez (D)	2003-2006	
3 Steven P. Neville (R)	2001-2004	
4 Jack L. Fortner (R)	2001-2004	
5 P. Mark Duncan (R)	2001-2004	

COUNTY MANAGER

Tony Atkinson

100 S. Oliver Dr., Aztec 87410-2432 334-9481

COUNTY CLERK

Fran J. Hanhardt (R) 2001-2004

P.O. Box 550, Aztec 87410 334-9471

ghanhardt@co.san-juan.nm.us

COUNTY TREASURER

Vickie I. Robinson (R) 2001-2004

100 S. Oliver Dr., Ste. 300,

Aztec 87410-2434 334-9421

vrobinson@co.san-juan.nm.us

COUNTY ASSESSOR

David J. Watts (R) 2003-2006

100 S. Oliver Dr., Ste. 400,

Aztec 87410-2435 334-6157

dwatts@co.san-juan.nm.us

COUNTY SHERIFF

Bobby R. Melton (R) 2003-2006

105 S. Oliver Dr., Aztec 87410 334-6107

sjcso@co.san-juan.nm.us

PROBATE JUDGE

Gary E. Risley (R) 2003-2006

P.O. Box 550, Aztec 87410 334-9471 or

grisley@co.san-juan.nm.us 326-1817

MAGISTRATES

Division

1 Carla Vescovi-Dial (R) 2003-2006

200 Gossett Dr., Aztec 87410 334-9479

2 James D. Atcitty (D) 2003-2006

950 W. Apache, Farmington 87401 326-4338

3 William A. Vincent, Jr. (R) 2003-2006

950 W. Apache, Farmington 87401 326-4338

4 Wilma R. Charley (D) 2003-2006

200 Gossett Dr., Aztec 87410 334-9479

SAN MIGUEL COUNTY

San Miguel County Courthouse

500 W. National Ave.

Las Vegas, New Mexico 87701

www.smcounty.net

	COUNTY COMMISSIONERS	Telephone	Term
1	Leroy H. Garcia (D)	425-9333/	2003-2006
2	Hugh H. Ley (D)	425-9334	2001-2004
3	Susano F. Ortiz (D)		2003-2006
4	Lawrence Rascon (D)		2001-2004
5	Kenneth C. Medina (D)		2001-2004

COUNTY MANAGER

Les Montoya

500 W. National Ave., Las Vegas 87701 425-9333/425-9334

smcmanager@lasvegas-nm.com

COUNTY CLERK

Pecos Paul Maez (D) 2001-2004

500 W. National Ave., Las Vegas 87701 425-9331

smclerk@lasvegas-nm.com

COUNTY TREASURER

Mark Guerin (D) 2001-2004

500 W. National Ave., Las Vegas 87701 425-9376

smctreasurer@lasvegas-nm.com

COUNTY ASSESSOR

Albert T. Padilla (D) 2003-2006

500 W. National Ave., Las Vegas 87701 454-1439

smcassessor@lasvegas-nm.com

COUNTY SHERIFF

Chris Najjar (D) 2003-2006

300 Mills Ave., Las Vegas 87701 425-7589

smsheriff@newmexico.com

PROBATE JUDGE

Melanie Y. Rivera (D) 2003-2006

500 W. National Ave., Las Vegas 87701 425-9331

MAGISTRATES

Division

1 Philip J. Romero (D) 2003-2006

1927 7th St., Las Vegas 87701 425-5204

2 Leo E. Gonzales (D) 2003-2006

1927 7th St., Las Vegas 87701 425-5204

SANDOVAL COUNTY

Sandoval County Courthouse

Bernalillo, New Mexico 87004

www.sandovalcounty.com

COUNTY COMMISSIONERS	Telephone	Term
1 William Sapien (D)	867-7500	2003-2006
2 Damon B. Ely (D)		2001-2004
3 David L. Bency (R)		2003-2006
4 Jack E. Thomas (D)		2001-2004
5 Elizabeth C. Johnson (D)		2001-2004

COUNTY MANAGER

Debbie Hays

P.O. Box 40, Bernalillo 87004 867-7500

COUNTY CLERK

Victoria S. Dunlap (R) 2001-2004
P.O. Box 40, Bernalillo 87004 867-7572

COUNTY TREASURER

James Truscio, Jr. (R) 2001-2004
P.O. Box 40, Bernalillo 87004 867-7581

COUNTY ASSESSOR

Rudy E. Casaus (D) 2003-2006
P.O. Box 5219, Bernalillo 87004 867-7562

COUNTY SHERIFF

John Paul Trujillo (D) 2003-2006
P.O. Box 5219, Bernalillo 87004 867-7526

PROBATE JUDGE

Mary O. Kwapich (R) 867-7572 or 2003-2006
P.O. Box 40, Bernalillo 87004 867-7647

MAGISTRATES

Division

1 Mary M. Humphrey (D) 2003-2006
P.O. Box 818, Bernalillo 87004 867-5202
2 Fred Kenneth Eichwald (D) 2003-2006
P.O. Box 1497, Cuba 87013 289-3519

SANTA FÉ COUNTY

Santa Fé County Courthouse

102 Grant

Santa Fé, New Mexico 87501

www.co.santa-fe.nm.us

COUNTY COMMISSIONERS	Telephone	Term
1 Harry B. Montoya (D)	986-6200	2003-2006

2	Paul D. Duran (D)	2001-2004
3	Mike D. Anaya (D)	2003-2006
4	Paul D. Campos (D)	2001-2004
5	Jack Sullivan (D)	2001-2004

COUNTY MANAGER

Steve Kopelman (Acting)

P.O. Box 276, Santa Fé 87504 986-6200

skopelma@co.santa-fe.nm.us

COUNTY CLERK

Rebecca "Becky" Bustamante (D) 2001-2004

P.O. Box 1985, Santa Fé 87504 986-6280

rbustamante@co.santa-fe.nm.us

COUNTY TREASURER

Philip Trujillo (D) 2001-2004

P.O. Drawer T, Santa Fé 87504 986-6253

ptruj@co.santa-fe.nm.us

COUNTY ASSESSOR

Benito J. Martinez, Jr. (D) 2003-2006

P.O. Box 126, Santa Fé 87504 986-6300

benitom@co.santa-fe.nm.us

COUNTY SHERIFF

Greg L. Solano (D) 2003-2006

P.O. Drawer Q, Santa Fé 87504 986-2400

PROBATE JUDGE

Ann Yalman (D) 2003-2006

P.O. Box 276, Santa Fé 87504 986-6278

ayalman@co.santa-fe.nm.us

COUNTY SURVEYOR

Allen C. Grace (D) 2001-2004

P.O. Box 276, Santa Fé 87504 660-0060

agrace@co.santa-fe.nm.us

MAGISTRATES

Division

1 Bill Dimas (D) 2003-2006

2052 Galisteo St., Santa Fé 87504 984-9914

2 George Anaya, Jr. (D) 2003-2006

2052 Galisteo St., Santa Fé 87504 984-9914

3 Richard M. "Buzzy" Padilla (D) 2003-2006

2052 Galisteo St., Santa Fé 87504 984-9914

SIERRA COUNTY

Sierra County Courthouse

100 N. Date St.

Truth or Consequences, New Mexico 87901

	COUNTY COMMISSIONERS	Telephone	Term
1	James M. Coslin (R)	894-6215	2003-2006
2	Russell Peterson (D)		2003-2006
3	John Young (R)	2001-2004	

COUNTY MANAGER

Adam Polley

100 N. Date St., T. or C. 87901 894-6215

COUNTY CLERK

Janice Armijo Sanchez (D) 2001-2004

100 N. Date St., T. or C. 87901 894-2840

COUNTY TREASURER

Sandi Chatfield (R) 2001-2004
100 N. Date St., T. or C. 87901 894-3524

COUNTY ASSESSOR

Isabel Salazar (D) 2003-2006
100 N. Date St., T. or C. 87901 894-2589

COUNTY SHERIFF

David Martinez (R) 2003-2006
311 Date St., T. or C. 87901 894-6617

PROBATE JUDGE

Josie M. Zamora (R) 2003-2006
100 N. Date St., T. or C. 87901 894-4416

MAGISTRATE

Thomas G. Pestak (R) 2003-2006
P.O. Box 607, T. or C. 87901 894-3051

SOCORRO COUNTY

Socorro County Courthouse

Socorro, New Mexico 87801

www.socorro-nm.com

COUNTY COMMISSIONERS Telephone Term

1	Rosalind F. "Rosie" Tripp (R) rosietrippusa@netscape.net	835-0589	2003-2006
2	Daniel P. Monette (R) danny87801@yahoo.com	2001-2004	
3	Laurel Armijo (D) larmijo@aoc.nrao.edu	2003-2006	
4	Marcos J. Gonzales (R)	2001-2004	
5	Dennis Harris (R)		

dhfarms@zianet.com 2001-2004

COUNTY MANAGER

Jo L. McSmith

P.O. Box I, Socorro 87801 835-0589

COUNTY CLERK

Audrey Jaramillo (D) 2001-2004

P.O. Box I, Socorro 87801 835-0423

ajaramillo@co.socorro.nm.us

COUNTY TREASURER

Albert C. Padilla (D) 2001-2004

P.O. Box KK, Socorro 87801 835-1701

apadilla@co.socorro.nm.us

COUNTY ASSESSOR

Valentin "Tiny" Anaya (D) 2003-2006

P.O. Box J, Socorro 87801 835-0714

COUNTY SHERIFF

Félix William Saavedra (D) 2003-2006

P.O. Box 581, Socorro 87801 835-0941

PROBATE JUDGE

Ruben Savedra (D) 2003-2006

P.O. Box I, Socorro 87801 835-2006

MAGISTRATE

Jim Naranjo, Jr. (D) 2003-2006

P.O. Box 1022, Socorro 87801 835-2500

socmsjn@state.nm.us

TAOS COUNTY

Taos County Courthouse

105 Albright St., Ste. D

Taos, New Mexico 87571

	COUNTY COMMISSIONERS	Telephone	Term
1	Don Francisco R. Trujillo II (D)	751-8521	2003-2006
2	Virgil D. Martinez (R)		2003-2006
3	Gabriel J. Romero (D)		2001-2004
4	Nicklos E. Jaramillo (D)	*2003-2004	
5	Emanuel B. Pacheco (D)		2003-2006

CHIEF ADMINISTRATIVE OFFICER

105 Albright, Ste. A, Taos 87571 751-8555

COUNTY CLERK

Jeannette G. Rael (D) 2001-2004

105 Albright, Ste. D, Taos 87571 751-8654

COUNTY TREASURER

Lorraine Coca Ruiz (D) 2001-2004

105 Albright, Ste. G, Taos 87571 751-8652

COUNTY ASSESSOR

Margie Abeyta (D) 2003-2006

105 Albright, Ste. F, Taos 87571 751-8653

COUNTY SHERIFF

Charlie A. Martinez (D) 2003-2006

105 S. Albright, Ste. K, Taos 87571 751-9795

PROBATE JUDGE

Jesus R. Gonzales (D) 2003-2006

105 Albright, Ste. D, Taos 87571 751-8537

MAGISTRATES

Division

1 Erminio E. Martinez (D) 2003-2006

920 Salazar Rd., Ste. B, 758-4030

Taos 87571

P.O. Box 586, Questa 87556 586-0761

2 Betty J. Martinez (D) 2003-2006

920 Salazar Rd., Ste. B, 758-4030

Taos 87571

P.O. Box 586, Questa 87556 586-0761

*Elected to fill unexpired term.

TORRANCE COUNTY

Torrance County Courthouse

Estancia, New Mexico 87016

COUNTY COMMISSIONERS Telephone Term

1 James W. Frost (R) 384-2418 2003-2006

2 Paul M. "Tito" Chavez (D) 2003-2006

3 Chester Riley, Jr. (D) 2001-2004

COUNTY MANAGER

Bob Ayre

P.O. Box 48, Estancia 87016 384-2418

COUNTY CLERK

Linda Jaramillo (R) 2001-2004

P.O. Box 767, Estancia 87016 384-2221

COUNTY TREASURER

Dorothy Sandoval (R) 2001-2004

P.O. Box 318, Estancia 87016 384-2241

COUNTY ASSESSOR

Cris D. Pohl (R) 2003-2006

P.O. Box 258, Estancia 87016 384-2331

COUNTY SHERIFF

Peter G. Golden (R) 2003-2006

P.O. Box 498, Estancia 87016 384-1217

PROBATE JUDGE

Mary Ann C. Anaya (R) *2000-2006

P.O. Box 48, Estancia 87016 384-2221

MAGISTRATE

Steve Jones (D) 2003-2006

P.O. Box 2027, Moriarty 87035 832-4476

P.O. Box 274, Estancia 87106 384-2926

**Appointed to fill unexpired term.

UNION COUNTY

Union County Courthouse

P.O. Box 430

Clayton, New Mexico 88415

COUNTY COMMISSIONERS Telephone Term

comm@plateautel.net

1 Richard Arguello (R)
comm@plateautel.net 374-8896 2003-2006

2 Shelley B. Carter (R)
comm@plateautel.net 2003-2006

3 Eugene E. Podzemny (R)
comm@plateautel.net 2001-2004

COUNTY MANAGER

Della Wetsel

P.O. Box 430, Clayton 88415 374-8896

comm@plateautel.net

COUNTY CLERK

Freida J. Birdwell (D) 2001-2004
P.O. Box 430, Clayton 88415 374-9491
unionclerk@plateautel.net

COUNTY TREASURER

Reba Rae Boyd (D) 2001-2004
P.O. Box 308, Clayton 88415 374-2331
uctreasurer@plateautel.net

COUNTY ASSESSOR

Louis F. Trujillo (D) 2003-2006
P.O. Box 430, Clayton 88415 374-9441
unionassessor@plateautel.net

COUNTY SHERIFF

Albert L. Johnston (D) 2003-2006
P.O. Drawer C, Clayton 88415 374-2583

PROBATE JUDGE

Leslie J. Taylor (D) 2003-2006
409 Maple St., Clayton 88415 374-2238

MAGISTRATE

Joe A. Blan (D) 2003-2006
836 Main, Clayton 88415 374-9472

VALENCIA COUNTY

Valencia County Courthouse
Los Lunas, New Mexico 87031
www.co.valencia.nm.us

COUNTY COMMISSIONERS Telephone Term

1	Mary J. Andersen (R)	866-2001	2003-2006
2	Alicia Aguilar (D)	2001-2004	
3	Paul E. Trujillo (D)	2003-2006	
4	Aurelio H. Padilla (D)	2001-2004	
5	Gary L. Daves (D)		
	monica@swcp.com	2001-2004	

COUNTY MANAGER

James Fernández

P.O. Box 1119, Los Lunas 87031 866-2001
vcm@swcp.com

COUNTY CLERK

Tina R. Gallegos (D) 2001-2004

P.O. Box 969, Los Lunas 87031 866-2073
clk@co.valencia.nm.us

COUNTY TREASURER

Diana Martinez-Coplen (D) 2001-2004

P.O. Box 939, Los Lunas 87031 866-2090
treas@co.valencia.nm.us

COUNTY ASSESSOR

Beverly Dominguez-Gonzales (D) 2003-2006

P.O. Box 909, Los Lunas 87031 866-2065
bgvcassr@nmia.com

COUNTY SHERIFF

Richard F. Perea (R) 2003-2006

P.O. Box 1585, Los Lunas 87031 866-2460
shr@co.valencia.nm.us

PROBATE JUDGE

Reyna Aragon-Carrejo (D) 2003-2006

P.O. Box 969, Los Lunas 87031 866-2073

probate@co.valencia.nm.us

MAGISTRATES

Division

1 Tody Perea (D) 2003-2006

121 Don Diego, Los Lunas 87031 865-4637

2 Danny H. Hawkes (D) 2003-2006

239 N. Main, Belen 87002 864-7509

3 John W. "Buddy" Sanchez (R) 2003-2006

121 Don Diego, Los Lunas 87031 865-4637